

Thus, a court order is now required prior to administrative seizure of certain principal residences.^{1/} Apart from these procedures, I.R.C. § 6334(a)(13)(A) exempts from levy any real property used as a residence by any individual (except for real property which is rented) if the levy amount does not exceed \$5,000.

There is no language in section 6334(e)(1) which expressly describes the type of judicial proceeding contemplated. However, language in the legislative history discussing RRA § 3401, Due Process in IRS Collection Actions, indicates that there would be a judicial hearing after notice. The Conference Report for RRA 98, discussing section 3401, provides:

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse or minor child would be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. At the judicial hearing, the Secretary would be required to demonstrate (1) that the requirements of any applicable law or administrative procedures relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists.

Internal Revenue Service Restructuring and Reform Act of 1998, Conference Report to Accompany H.R. 2676, H.R. Conf. Rep. No. 105-599, 105th Cong., 2d Sess., at 267.

Based upon the language of section 6334(e)(1) and this legislative history, judicial approval is specifically required prior to seizure of the principal residence of the taxpayer, taxpayer's spouse, former spouse or minor child. It has been determined, after consultation with the Department of Justice, that the section 6334(e)(1) proceeding will be a plenary hearing involving the participation of the taxpayer, consistent with this legislative history.

^{1/} Written approval by the District Director or Assistant District Director is no longer legally required prior to seizure of a taxpayer's principal residence however, such approval will still be required procedurally. In addition, there is no longer a jeopardy exception to the approval requirements for principal residence seizures.

2. Procedures for Instituting a Section 6334(e)(1) Proceeding

A section 6334(e)(1) proceeding should be commenced in accordance with the general procedures for suits to collect found in CCDM (34)700. A suit letter should be written requesting and authorizing the institution of a civil action for judicial approval of a seizure of a principal residence, pursuant to I.R.C. § 6334(e)(1). As with a lien foreclosure suit letter, the section 6334(e)(1) suit letter should establish that the tax liability is owed by setting forth the specifics of the tax liability--i.e., that the assessment was proper, date of assessment, demand for payment, lien information, etc. In all cases, the liability owed by the taxpayer must exceed \$5,000. The letter should describe the extent of the taxpayer's interest in the property to be seized, and the extent of any other person's interests. The letter should also set forth an accurate legal description of the real property. Such legal description can be obtained from the deed relating to the specific property which has been recorded with the local recording office. See CCDM (34)752.1.

If the property being seized is the principal residence of the taxpayer's spouse, former spouse or minor child, the suit letter should provide the name of that person or persons. Upon commencement of a section 6334(a)(1) proceeding, that person or persons, along with the taxpayer, will receive notice.

The suit letter should also set forth information establishing that all legal and procedural requirements relevant to the proposed seizure have been met, such as the circumstances under which notice was given pursuant to I.R.C. § 6331(d). Pursuant to RRA 98 Section 3444, Codification of IRS Administrative Procedures for Seizure of Taxpayer's Property, and new I.R.C. § 6331(j), the suit letter should also set forth information establishing that the required investigation of the status of the property to be seized was conducted. Elements in this investigation include verification of the taxpayer's liability and a thorough consideration of alternative collection methods. Moreover, the suit letter should also set forth information pertaining to any notices sent or hearings conducted pursuant to new I.R.C. §§ 6320 or 6330, addressed further below. Procedural requirements include any required approval and review procedures developed pursuant to RRA 98 Section 3421, Approval Process for Liens, Levies, and Seizures.

The Internal Revenue Service has determined that the personal written approval of a District Director or Assistant District Director will continue to be required prior to seizing any property used by any person as a principal residence. This approval should accompany the suit recommendation and should establish that the Service has verified that the tax liability is owed, complied with all legal and procedural requirements with respect to the proposed seizure, and considered all viable alternative collection methods.

The Tax Division of the Department of Justice has indicated the desire to initially handle and coordinate all section 6334(e)(1) proceedings. Accordingly, in order to ensure that

all section 6334(e)(1) matters are consistently referred to the Tax Division, all section 6334(e)(1) suit letters must be sent to Branch 1 of the General Litigation Division for preruleview.

A proceeding should ordinarily be brought under section 6334(e)(1) whenever the Service would have otherwise sought administrative seizure of a principal residence under prior law. However, suits should still be brought to foreclose the federal tax lien and reduce the tax liability to judgment in lieu of bringing a section 6334(e)(1) proceeding whenever it is determined that such suits would be optimal. For example, a lien foreclosure suit may be preferable to a section 6334(e)(1) proceeding when there are questions regarding title or lien priority that create an unfavorable market for administrative sale. See CCDM (34)750. A lien foreclosure suit may also be a specific option when the collection statute of limitations is about to run. Bringing a lien foreclosure suit is consistent with the policy underlying section 6334(e)(1) of assuring that the disposition of principal residence property is sanctioned by a court. To further ensure uniformity in the choice of a section 6334(e)(1) proceeding or a lien foreclosure suit, all suit letters requesting lien foreclosure on a principal residence should be sent to Branch 1 of the General Litigation Division for preruleview. As with the section 6334(e)(1) suit recommendation, the District Director's approval should be included along with a suit letter requesting lien foreclosure on a principal residence.

3. Interaction with New Due Process Procedures, RRA 98
Section 3401

New I.R.C. § 6320, effective January 19, 1999, provides that a taxpayer is entitled to written notification of the filing of a notice of federal tax lien. The section 6320 notice provides the taxpayer with the right to request a hearing before the Internal Revenue Service Office of Appeals ("Appeals"). The taxpayer is entitled to request one section 6320 due process hearing per tax period to which the unpaid tax specified in the section 6320 notice relates.

New I.R.C. § 6330, also effective January 19, 1999, similarly entitles a taxpayer to notice of that taxpayer's right to a hearing before levy is made on any property or rights to property belonging to that taxpayer. The section 6330 notice describes the taxpayer's right to request a hearing within 30 days. Again, the taxpayer is entitled to request only one section 6330 due process hearing per tax period to which the unpaid tax specified in the section 6330 notice relates.

Section 6330 hearings will be held in conjunction with section 6320 hearings to the extent practicable. At either hearing, the taxpayer may raise any relevant issue pertaining to the unpaid tax specified in the notice, including appropriate spousal defenses, challenges to the appropriateness of collection actions, and offers of collection alternatives. The taxpayer may also raise challenges to the underlying tax liability if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute such liability. The taxpayer is precluded from raising any issue that has been raised at any previous administrative or judicial proceeding in which the taxpayer "participated meaningfully." The taxpayer may seek judicial review, in either Tax Court or a district court, as appropriate, of the determination by Appeals.

Taxpayers whose residences are subject to a section 6334(e)(1) proceeding after January 18, 1999, will, in most instances, have received an I.R.C. § 6330 notice (and possibly an I.R.C. § 6320 notice) with respect to the tax periods for which the Service seeks to effectuate collection via seizure of a principal residence. In these cases, where the taxpayer has had a previous section 6320 or section 6330 hearing, a close examination of the issues raised in that prior hearing is required. Where a taxpayer seeks judicial review of Appeals' determination in a section 6320 or section 6330 hearing, that taxpayer may be precluded from raising issues in a subsequent section 6334(e)(1) proceeding that were raised or could have been raised in the earlier court proceeding. Accordingly, it is important that District Counsel carefully review what has occurred in any previous section 6320 or section 6330 proceeding and make an analysis with respect to issue preclusion in the section 6334(e)(1) proceeding. This information must be clearly set forth in the section 6334(e)(1) suit letter.

With respect to any section 6320 or section 6330 hearings that may take place after a section 6334(e)(1) proceeding, the express statutory language precludes reconsideration in a section 6320 or section 6330 hearing of issues raised in a prior administrative or judicial proceeding where the taxpayer "participated meaningfully." The taxpayer would thus be precluded from raising for reconsideration in a section 6320 or section 6330 hearing any issues pertaining to the principal residence seizure addressed in the prior section 6334(e)(1) proceeding.

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