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From:
Sent: Wednesday, May 22, 2013 9:44:39 AM
To:
Cc:
Subject: FW:

Hi This email is in response to your request for our advice. The facts and issue that you sent follow our advice.

The Internal Revenue Service: Reciprocal Sales Procedures—re: Forced Sales in State of NJ, Field Revenue Officer/Supervisory Revenue Officer Procedures states that in order to avoid lien priority litigation and to achieve administrative efficiency in the collection of taxes, the Service and the State of New Jersey entered into a MOU that covers both the forced and the voluntary sales of . The MOU itself, which was signed in by the United States and New Jersey, provides clearly that where a has been sold/transferred voluntarily and proceeds from the sale are insufficient to satisfy both federal and state tax liens, the two agencies will split the proceeds equally. The Bulk Sale provisions of the New Jersey statutes provide that the purchaser of any business assets, , must notify the State of the pending sale so that an escrow account may be opened if the seller is potentially liable for State taxes. The purpose of the Bulk Sale provision is to protect the State against the dissipation of the assets of a seller who may have a State tax liability. The statute does not directly effect the application of the MOU to either the Service or the State except to the extent that it protects against the dissipation of taxpayer assets. Pursuant to the MOU, the Service and the State are required to divide the proceeds of the sale. Your request for advice states variously that the escrow fund contains $ and $. The amount divided must be whichever amount is actually in escrow minus the sale expenses. If the amount in escrow is more than the $ federal tax liability plus the $ State tax liability plus the expenses of sale, each jurisdiction will get the entire amount owed to them. If the amount in escrow minus the sale expenses is less than the combined amounts owed in federal and State taxes, the two jurisdictions will split the funds evenly.

The facts that you gave us are as follows:

The taxpayer is attempting to sell its to a bona fide purchaser for consideration of $. The funds are presently being held in escrow. The taxpayer has federal employment tax liabilities and New Jersey state tax liabilities. Notices of Federal Tax Lien were filed at the County Clerk's office of

New Jersey.

The State of New Jersey, Division of Taxation sent correspondence to the purchaser of the stating that "pursuant to procedures established for the transfer of a by the Division of Taxation you are hereby directed to hold $ in escrow at closing and to remit on demand to the Section of the Division of Taxation the entire amount or any portion thereof. The undersigned further agrees not to release any portion of the escrow to the transferor, any other section of the Division of Taxation, or any other government authority or court." An earlier letter to the taxpayer noting that this sale was subject to the Bulk Sales provisions of the New Jersey tax statutes and requesting various tax returns and monies due thereon. The State of New Jersey provided a Taxpayer Schedule of Liabilities for the taxpayer dated , which indicated that the total amount due is $.

The United States and the State of New Jersey have a Memorandum of Understanding (MOU) concerning the voluntary sale or transfer of a where the proceeds are insufficient to satisfy both Federal and State tax liens. The Addendum to Memorandum of Understanding Between the Internal Revenue Service and the State of New Jersey Division of Taxation, ( ), provides that in the case of a voluntary sale/transfer of a where there are not sufficient proceeds from the sale to satisfy both Federal and State tax liens, both agencies agree to split proceeds equally, after allowing for reasonable expenses of sale to approved third parties, to the maximum extent of their respective lien interest, regardless of which agency has a superior lien.

The question presented is whether all NJ state tax liabilities (incurred and to be incurred) by the taxpayer are included in the MOU and are subject to a 50/50 split of the available proceeds with the IRS, regardless of the Bulk Sale provisions.