

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

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XXX XXXXXXXXXXXX XX.,

Plaintiff,

V.

XXXX x. XXXXXXXXXXXX,

Defendant.

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CASE NO.

~~~~~  
MEMORANDUM OF LAW
IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE
~~~~~

XXXX X. XXXXXXXXXXXX  
XXXXX XXXX XXX  
Hialeah, Florida 33014

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**IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
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|                       |   |                                            |
|-----------------------|---|--------------------------------------------|
| XXX XXXXXXXXXXXX XX., | ) |                                            |
|                       | ) | CASE NO.                                   |
| Plaintiff,            | ) |                                            |
|                       | ) |                                            |
| V.                    | ) |                                            |
|                       | ) |                                            |
| XXXX X. XXXXXXXXX,    | ) | <b><u>MEMORANDUM OF LAW</u></b>            |
|                       | ) | <b><u>IN SUPPORT OF</u></b>                |
| Defendant.            | ) | <b><u>DEFENDANT'S MOTION TO STRIKE</u></b> |
| _____                 | ) |                                            |

Defendant filed a motion to Strike the "tax deed" of Plaintiff on the grounds that the Government's failure to strictly comply with the service requirements of 26 U.S.C. Section 6335(a) and (b) invalidate the tax sale. This is Defendant's brief and memorandum of law in support thereof.

**SECTION I. ISSUE PRESENTED:**

That the Internal Revenue Service's failure to strictly comply with the provisions of 26 U.S.C. Section 6335 invalidates the IRS tax sale of the subject property and all issuances therefrom, i.e., Certificate of Sale and Director's Deed.

**SECTION II. STATEMENT OF FACTS AND BACKGROUND:**

1. On or about June 29, 1994, the United States, by and through its employees and agents, specifically Revenue Officer Richard Agapay, purported to seize the property which is the subject of this litigation, by mailing a Notice of Seizure on XXXX X. XXXXX (exhibit "A" attached) by certified mail. (exhibit "B" attached)

2. On or about July 13, 1994, the United States, by and through its employees and agents, specifically Revenue Officer Richard Agapay, purported to place the subject property up for sale. (exhibit "C" attached) by certified mail. (exhibit "D" attached)

3. On or about August 9, 1994, the United States, by and through its employees and agents, specifically Revenue Officer Richard Agapay, purported to sell the subject property to XXX XXXXXXXXXXXX XXXXXXXXX. (exhibit "E" attached)

4. The "Seized Property Sale Report", Form 2436, (exhibit "F" attached) Public Auction Sale, Form 2434, (exhibit "G" attached) and the certified copy of the Record of Seizure and Sale of Real Estate, Record 21, (exhibit "H" attached) confirms the followings facts:

a) Notice of Seizure of 6-29-94 was by Certified Mail and not by personal service.

b) Notice of Sale of 7-13-94 was by Certified Mail and not by personal service.

**SECTION III. ARGUMENT:**

**(A) Introduction.**

1. The elemental principle concerning administrative tax sales is that the statutory procedure for confiscation of property and the issuances therefrom must be precisely followed. The courts have always required that the procedure for divesting an owner of title to his property on account of delinquent taxes must be followed strictly in accordance with the law. Tax titles have been stricken down for defects which would not ordinarily cause a reversal of judgment. The courts have always been diligent in

their effort to protect persons in their ownership of land. Therefore, tax titles are generally looked upon with a great deal of distrust and suspicion, purchasers have been reluctant to accept tax titles, and title insurance companies ordinarily will not insure any title dependent solely upon the tax deed.

2. The Due Process Clause of the Constitution mandates that the IRS strictly comply with the statutory process established by Congress before it is authorized to make any collection efforts against a taxpayer. Where the requirements of law have not been followed, the defects taint the collection process and renders the IRS actions invalid.

3. In the Internal Revenue Code Congress has specified the essential steps for the seizure and sale of real and personal property. One of the essential steps is contained in the clear and unambiguous language of Section 6335. Section 6335 of the Internal Revenue Code provides that the Secretary or his delegate is authorized and required to personally serve a Notice of Seizure and Notice of Sale on the owner of the real and personal property, or the notice shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. Section 6335(a). The service requirements in relevant part are as follows:

Section 6335. Sale of seized property

*(a) Notice of seizure.*--As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property, ... or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address....

*(b) Notice of sale.*--The Secretary shall as soon as practicable after seizure of the property give notice to the owner, in the manner prescribed in subsection (a)....  
26 U.S.C. Section 6335 (1988).

4. The Internal Revenue Service itself has by regulation interpreted Section 6335(a) and (b) to require personal service of the notices. See 26 C.F.R. Section 301.6335-1(b)(1) (1981).

5. The language of Section 6335 is crystal clear, and Congress has mandated very specific methods by which notice of seizure and notice of sale "*shall*" be given. The service of the notices pursuant to Section 6335 are permitted to be given by mail only in the specifically limited circumstance where "...the owner cannot be readily located, or has no dwelling or place of business within [the] district...." This is the plain and simple English used by Congress and so determined by a plethora of federal and state decisions.

6. Only when the owner cannot be readily located, or has no dwelling or place of business within such district, can the notice be mailed to his last known address. Section 6335(a). In other words, a notice must be hand-delivered to the owner of the property and can only be mailed to the owner's last known address when he cannot be located to perfect personal service on him and does not have a dwelling or place of business within the district where the seizure was made.

7. The Defendant was not personally served the Notice of Seizure or the Notice of Sale. Nor were these notices left with any person of competent age and discretion residing at their "usual place of abode."

8. The critical statute at issue herein is 26 U.S.C. Section 6335. Congress was



aware when Section 6335 was enacted that a tax sale not in strict compliance with the *enabling statute* is void, since the Supreme Court determined this issue early in our jurisprudence.

That no individual or public officer can sell, and convey a good title to, the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such a power *must pursue with the precision the course prescribed by law*, or his act is invalid, is a principle which has been repeatedly recognized in this Court.

Thatcher v. Powell, 6 Wheat. 119, 125, 5 L.Ed. 221, 222 (1821).

9. The public policy applicable to IRS tax sales was stated succinctly by the Fifth Circuit in Reece v. Scoggins,<sup>1</sup> 506 F.2d 967, 971 (5th Cir. 1975):

The concept of a citizen's right, absent unusual circumstances, to the unobstructed control of his own land, free from arbitrary governmental interference, has long been a fundamental principle in our country's jurisprudence.

10. The Tenth Circuit, applying U.S. Supreme Court decisions, has ruled that mandatory statutory language must be followed precisely. In Colorado Property Acquisitions, Inc. v. United States, 894 F.2d 1173, 1174-1175 (10th Cir. 1990), the IRS insisted upon strict compliance with 26 U.S.C. Section 7425. There, a lien holder--superior to the IRS--sent notice of nonjudicial foreclosure to the IRS as required under Section 7425. However, the notice was sent by regular mail when the statute requires

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<sup>1</sup> NOTE: The Reece decision was prior to the [Fifth Circuit Court of Appeals Reorganization Act of 1980] of which the State of Florida was in the Fifth Judicial Circuit and therefore the decision is binding on this Court. Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981); Stein v. Reynolds Sec., Inc., 667 F.2d 33 (11th Cir. 1982).

notice by certified or registered mail. The IRS asserted its lien against the transferee of the purchaser after the sale. The government argued that the notice sent by regular mail failed to comply with Section 7425 and, therefore, it did not receive an effective notice. The Tenth Circuit agreed with the government's interpretation of the statute and invalidated the sale:

The mandatory statutory language which sets forth a particular and specific method of delivery of notice demonstrates beyond argument that other methods of delivery of the foreclosure notice, such as service by ordinary mail as occurred in the instant case, are impermissible. As the Supreme Court stated in *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 20 (1979) (quoting *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 [7 AFTR 8847] (1929)): "*When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.*" Congress has the right to specify a particular method of delivery of notice and when it does so the statutory requirement must be met in order to effect valid notice.

We recognize the harshness of this rule. *This rule allows the IRS to receive actual notice, as it did in the instant case, ignore the notice and still retain the right to levy upon the property.* The remedy, if any there is to be, must come from Congress and not from the Court. [Emphasis added].

11. In Title Ins. Co. of Minnesota v. I.R.S. of U.S., 963 F.2d 297 (10th Cir. 1992), the Tenth Circuit again strictly applied the Internal Revenue Code, but this time against the IRS. The IRS failed to send a written notice of intent to redeem property as required by treasury regulations within the regulatory time period. Even though the IRS gave verbal notice, the Court held "[t]here was simply no compliance with the mandatory provisions of C.F.R. Section 301.7425-4(b)(4)(ii), which in our view is sufficient to invalidate the certificate of redemption..." Id. at 302.

12. On December 15, 1994, the Ninth Circuit rendered its decision in Anderson

v. United States, 44 F.3d 795 (9th Cir. 1995). The Anderson Court reversed the district court's judgment in favor of the United States, invalidated the IRS' tax sale, and ruled that: "We, like other circuits, have always required strict compliance by the government with [Section] 6335." The issue in the Anderson case was the government's failure to strictly comply with the provisions of Section 6335(e).

13. The overwhelming authority and law in the instant matter discloses that governmental seizure and sale of taxpayer property is invalid where the government violates the enabling statute in the exercise of that power. Due to the IRS' violations of the enabling statutes in the instant matter as argued below, the tax sale, and all issuances therefrom, are void *ab initio*, and the Court should rule accordingly.

**(B) The federal and state courts have repeatedly ruled that the IRS cannot convey a good title unless its agents precisely complied with the law.**

1. The federal and state courts all recognize that the IRS must strictly comply with the enabling statutes before it can convey a valid title to property sold at an IRS tax sale. The Internal Revenue Service itself issued a memorandum written in 1987, which provides an analysis of the requirements contained in the enabling statute, Section 6335. (exhibit "I" attached).

2. The IRS memorandum is the Service's official interpretation of the law and its analysis of a few of the cases relied upon by the Defendant herein. The Service concludes in its memorandum: (1) that strict compliance with statutory provisions is

required to validate tax sales, and that strict construction applies to all portions of the statute; (2) that failure on the part of the government to comply with the notice requirements of Section 6335 voids the sale; (3) that the Service may not mail the notice of seizure and/or sale to an owner or possessor who is in the district; and (4) that the Service's official position is that a notice of seizure and/or sale in the district must be hand-delivered to the owner or possessor by the delegate of the Secretary (generally the revenue officer) at his place of abode or business.

3. As noted, the IRS' official interpretation of the law was derived from federal court precedents:

In recognition of the Damoclean nature of this ultimate weapon, Congress has imposed precise strictures on the seizure and sale of property to satisfy legitimate tax deficiencies ... absent literal compliance with its provisions, the Government sale of land cannot stand.

Reece v. Scoggins,<sup>1</sup> 506 F.2d 967, 971 (5th Cir. 1975).

Although the IRS has a number of options for giving notice to the property owner under 26 U.S.C. Sections 6335(a) and (b), strict compliance with the statute is required. If the IRS wishes to give notice by mail, it must satisfy the statutory pre-conditions for doing so. Here, the IRS did not satisfy these conditions.

Powelson v. U.S., 979 F.2d 141, 144 (9th Cir. 1992).

Congress has set forth precise requirements for notice of seizure and sale of property in tax deficiency situations. "[W]hen the government seeks to enforce the laws, it must follow the steps which Congress has specified."

Goodwin v. U.S., 935 F.2d 1061, 1065 (9th Cir. 1991) (citing Reece, supra at 971).

The legitimacy of allowing the government to seize and sell property prior to adjudication, however, has long been recognized to depend on strict compliance by government officials with the procedures prescribed by law.

Kulaway v. U.S., 917 F.2d 729, 734 (2nd Cir. 1990).

An agency of the government must *scrupulously observe* rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.

United States v. Heffner, 420 F.2d 809 (4th Cir. 1969).

4. Additional federal authority interpreting the seizure and sale enabling statutes is considerable and require literal compliance with the provisions established by Congress. See Johnson v. Gartlan, 470 F.2d 1104, 1106 (4th Cir.) (absent ratification by the taxpayer, sale is voidable where IRS has failed to comply with Section 6335), cert. denied, 414 U.S. 865 (1973); *cf.* Fuentes v. Shevin, 407 U.S. at 91 (a prerequisite for summary seizure of property is that "the State has kept strict control over its legitimate force" by, *inter alia*, providing standards in a narrowly drawn statute); Margiotta v. United States, 214 F.2d 518, 522 (2nd Cir. 1954) (the government's sale of property after giving only one day's public notice, instead of the 10 days required by Sections 3693(b) and (c) of the 1939 Code, was invalid); Aqua Bar & Lounge, Inc. v. United States, 438 F.Supp. 655 (E.D. Pa. 1977) (IRS sale invalid because the Notice of Seizure and Notice of Sale were not personally served upon the taxpayer; the possibility that the plaintiff may have received actual written notice through the mail is irrelevant).

5. In Brown v. United States, 496 F.Supp. 903, 907 n. 7 (D.N.J. 1980), the Court also admonished purchasers that titles derived through tax sales are no better than any other title, and warned that tax titles must be examined and searched with the same objective and meticulous care as any other title.

Seizure and sale of property by IRS involves an *administrative process conducted without any judicial action or supervision as to correctness or regularity*. In recognition of the principle of inviolability of private property, Congress has imposed *precise strictures* on this process, for the *obvious protection of the taxpayer and his property*, see *Aqua Bar*, supra, at 939, citing *Thatcher v. Powell*, 19 U.S. 119, 6 Wheat. 119, 125, 5 L.Ed. 221 (1821) and *Reece v. Scoggins*, 506 F.2d 967, at 971 (CA 5, 1975). See, also *U.S. v. Lee*, 106 U.S. 196, 1 S.Ct. 240, 27 L.Ed. 171 (1882).

Brown, 496 F.Supp. at 907-909.

6. The facts concerning the sale of the subject property are virtually indistinguishable from those in the case authority cited and relied upon by the Defendant. In the Reece case an IRS agent served notice on Reece that the IRS had seized the property in question because of his failure to pay certain income taxes. During the next two weeks, the agent twice visited Reece's home to give him notice of a public auction sale of the land but found no one at home and departed without leaving any written notice at the residence. The agent published notice of the sale in a newspaper circulated in Butts County and posted similar notices at the courthouse and various locations in the county. A certified letter containing notice of sale was also delivered to Reece's residence. Nevertheless, the Reece Court invalidated the seizure and sale because the government failed to personally serve the notice:

The mailing of notice, even if done in a timely fashion, satisfies the statute only if the taxpayer has no dwelling or place of business within the revenue district.

\* \* \*

The language of this section is clear and mandatory; absent literal compliance with its provisions, the government sale of land cannot stand.

Reece,<sup>1</sup> 506 F.2d at 971.

7. In the Kulawy case, an IRS agent gave public notice eight days prior to the sale of two restored Chevrolet Corvettes rather than the ten days required by Section 6335. The trial court ruled that the government's eight days' notice was only a *de minimis* noncompliance and that Kulawy had failed to show any resulting prejudice. When reversing the trial court, the Second Circuit ruled that the trial court erred when it determined (1) strict compliance by the government with Section 6335(d) was not required, and (2) Kulawy was required to show prejudice resulting from the government's improperly short public notice. The Second Circuit held that the extraordinary powers granted to the government of levying, seizing and selling property for tax collection purposes without prior judicial hearing are dependent upon strict compliance with the procedures prescribed by statute. Kulawy, 935 F.2d at 734.

8. In the Goodwin case two IRS agents went to the residential real property where Goodwin resided. The agents attempted to deliver a notice of levy and seizure but Goodwin was not there. Subsequently, the agents mailed the notices by certified mail. Goodwin contacted the IRS after receiving the notices, promised to pay the taxes, but made no payments. Two months later, the IRS mailed Goodwin a Seizure and Sale Worksheet which established the minimum bid price for the residential property. Goodwin promised to pay the minimum bid price within a month but again made no payment. The IRS then posted a Notice of Public Auction Sale to be held three weeks later. Goodwin, 935 F.2d at 1063.

9. The sale was held, but no bidders appeared. The property was declared sold

to the United States pursuant to 26 U.S.C. Section 6335(e)(1)(C). Approximately eight months later the District Director's Deed was filed with the County Recorder's Office. Goodwin then filed a complaint which alleged that the seizure and sale were invalid because of defective service. Furthermore, Goodwin sought an order restraining the government from selling the property. The trial court found that the notice received by Goodwin was sufficient and refused to issue the restraining order. Goodwin, 935 F.2d at 1063. Subsequently, the government filed a motion for summary judgment which was granted by the trial court. The trial court ruled that serving the notices by certified mail satisfied the requirements of Section 6335, and Goodwin appealed. Id.

10. The government conceded on appeal that a literal reading of Section 6335 requires it to personally serve a written notice to Goodwin or to have left the written notice at Goodwin's usual place of abode. The government argued, however, that a literal reading of Section 6335 is not required. Goodwin, 935 F.2d at 1064. According to the government, Goodwin could not demonstrate a lack of actual notice, and therefore he could not show prejudice resulting from the *de minimis* noncompliance. Id. Furthermore, in the Goodwin case the government argued every conceivable equitable issue as to why it did not need to literally comply with the statute.

11. The Ninth Circuit disagreed with each and every argument advanced by the government and adopted the recent Kulawy decision rendered by the Second Circuit:

The Second Circuit, in *Kulawy v. United States*, 917 F.2d 729 (1990), recently addressed the question whether there must be strict compliance with the notice requirements of [Section] 6335. The Second Circuit held that the extraordinary powers granted to the government of levying, seizing and selling property for tax collection purposes without prior



judicial hearing *are dependent upon strict compliance with the procedures prescribed by statute.* *Id.* at 734.

... the necessity for complying with [Section] 6335(d) could be no greater than the necessity for complying with [Sections] 6335(a) and 6335(b). In following the Second Circuit, *we hold that the language and purpose of [Section] 6335(a) and [Section] 6335(b) require that the government be held accountable for failure to strictly comply with the procedures prescribed by the two provisions.* See *Kulawy*, 917 F.2d at 735.

Moreover, because [Section] 6335 requires strict compliance, *Goodwin did not have the burden of demonstrating prejudice.* Cf. *id.*....

Although we would not apply a literal reading of a statute that required a result demonstrably in conflict with the drafter's intentions, no such apparent conflict exists here. (Cite omitted). Congress has set forth *precise requirements for notice of seizure and sale of property* in tax deficiency situations. "[W]hen the government seeks to enforce the laws, *it must follow the steps which Congress has specified.*" *Reece*, 506 F.2d at 971. The government did not give Goodwin the notice required by [Section] 6335. Accordingly, as between Goodwin and the government, the seizure and sale of the Gladstone property was invalid.

Goodwin, 935 F.2d at 1065. [Emphasis added].

12. It is apparent that the statutes, regulations, IRS admissions contained in the IRS Manual and memorandums,<sup>2</sup> and the unbroken line of case authority since at least 1821, require--after levy, but before sale--a written notice of sale to be personally served. Failure of, or defect in, the notice renders a subsequent sale invalid *ab initio*.

13. In the decision by the District Court in Bretz v. United States, No. TY-89-290-CA (E.D. Tex. March 4, 1991), the IRS sale of the Bretz' principal residence was invalidated because the government served the Notice of Sale by certified mail, a true and correct copy of the Bretz' decision is attached hereto as exhibit "J". There, the

government contended that service by mail was necessary because it feared that violence might be used against its representatives. However, the Bretz Court noted that the government admitted when a potentially dangerous situation such as that arises, a revenue officer can request an armed escort to accompany him. Such procedure was, in fact, used when the Notice of Seizure was served upon Mr. Bretz, but was not followed for the Notice of Sale. Bretz, at \*3.

14. In United States v. Good Samaritan Church, et al., No. A91-446 (DC Alaska, November 6, 1992), attached hereto as exhibit "K", the United States sought to quiet title to property it had purchased at an IRS sale. There, the government acknowledged its failure to strictly comply with the notice requirements of subsection 6335(b). However, it moved the court to recognize an exception to the mandate of Goodwin v. United States, 935 F.2d 1061 (9th Cir. 1991), where personal service was made difficult through threats of violence to IRS agents by Mr. Przybyla. The district court refused to carve out an exception since the government did not produce any evidence to show significant threats of physical violence anytime within the six-year period separating Przybyla's conviction in 1983 and when the notice of sale was mailed in 1989. In fact, the court found that the government was not afraid to approach Mr. Przybyla in August 1987 when it served him personally with the notice of seizure at their Anchorage office.

15. The Good Samaritan Court held that as a matter of law the sale of the

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<sup>2</sup>. The IRS manuals are party admissions of the defendant, United States. U.S. v. Van Griffin, 874 F.2d 634, 638 (9th Cir. 1989) (government manuals admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)).

subject property was invalid due to the government's failure to strictly comply with the notice provisions of Sections 6335(a) and (b).

16. In Forsman v. Tweedy, No. CV 92-91203 (Idaho, December 3, 1993), attached hereto as exhibit "L", Mr. Forsman, the successful purchaser at an IRS tax sale, purportedly purchased the right, title and interest of Tweedy and Maulding. Following expiration of the prescribed one hundred eighty (180) day redemption period, during which the property was not redeemed, Forsman was issued a Director's Deed for the subject property.

17. Forsman brought suit to quiet title to the property, and Tweedy/Maulding moved for partial summary judgment on the issue of whether the government properly served Notices of Seizure and Sale pursuant to 26 U.S.C. Section 6335. Forman moved for summary judgment on the issue of ownership, contending the IRS Deed he possessed was *prima facie* evidence of his ownership and Tweedy/Maulding failed to redeem within the 180-day period.

18. Revenue Officer Peterson physically went to the subject property where Tweedy/Maulding resided and encountered a chained access to the property. Officer Peterson did not approach the dwelling house. He taped the notices to the chain and left. Relying upon the case authority previously cited by Neary, the Idaho District Court ruled that "it cannot be said Peterson's actions were a reasonable attempt at personal service. Taping the notices to the chain was not a reasonable extension of personally serving Tweedy/Maulding's 'usual place of abode' and cannot be said to be reasonably calculated to apprise the parties of the notices."

In short, the Federal Courts have held the Internal Revenue Service must make a reasonable attempt to personally serve notices ... actual notice, in the absence of compliance with [Section] 6335, is insufficient to overcome a procedural deficiency in personal service and does not satisfy the notice requirement of [Section] 6335.

Forsman at \*8.

19. In Monzingo v. Alvarez, No. 78,840 (Texas, February 8, 1994), attached hereto as exhibit "M", the Texas District Court held the Director's Deed to be invalid *ab initio*, due to the IRS' failure to strictly comply with Section 6335.

BE IT REMEMBERED, that on this the 6th day of January, 1994, came on to be heard for trial the above numbered and entitled cause, and the Plaintiff appeared in person, pro se, and the Defendant appeareth only by and through his Attorney Of Record, Greg H. Walker, and the Court having considered the pleadings and having heard the argument of counsel, is of the opinion that the Defendant's Quitclaim Deed dated the 6th day of May, 1992, wherein he is the Grantee and the United States of America, Department Of The Treasury, Internal Revenue Service, Arturo A. Jacobs, District Director Of Internal Revenue, Houston, Texas, is the Grantor ... is voidable ab initio due to the United States Internal Revenue Service's failure to strictly comply with the provisions of Title 26, United States Code, Section 6335(a) and 6335(b) as the Court finds that the United States Internal Revenue Service failed to give notice in writing to the Plaintiff of either or both the seizure and the sale by personal delivery and/or leaving such a notice at this usual place of abode....

Monzingo, at \*1.

20. In Martin v. Rubel Enterprises, et al., No. 92-56074 (9th Cir. March 23, 1994), attached hereto as exhibit "N", the Ninth Circuit held the seizure and sale of Martin's property was invalid. Martin owned a piece of property in San Bernardino County, California. The IRS filed a notice of lien on the property. The property was seized by the IRS and Martin was given notice of the seizure. Notice that the property

was to be sold was mailed to Martin on August 18, 1989. The revenue officer handling the case mailed the notice apparently because he felt that Martin was too dangerous to be approached individually by an IRS officer but that Martin would sign for certified mail.

21. On September 1, 1989, the property was sold by the IRS to Paul Rubel. After he paid the purchase price, Mr. Rubel was issued a certificate of sale naming Rubel Enterprises as the purchaser. Rubel recorded the certificate in San Bernardino County. Martin did not redeem the property, as he could have by paying the sale price plus interest, within 180 days of the sale. The IRS then deeded the property to Rubel and Rubel recorded the deed.

This case involves a procedural failure by the IRS indistinguishable from that which occurred in Goodwin. There is no evidence in the record that Martin could not "be readily located, or [had] no dwelling or place of business within [the Internal Revenue] district." 26 U.S.C. [Section] 6335(a). In fact, according to the IRS "Seizure Activity Report Data" sheet attached to Martin's brief, it appears that notice was mailed to Martin "because of his isolation, he should [not] [sic] be approached in person (danger to IRS employees), and he does sign for his cert. mail." Under the clear language of the statute, these are not permissible reasons for failing to deliver notice to Martin in person or to his home or place of business. Accordingly, as between Martin and the government, the seizure and sale of Martin's property was invalid.

22. Upon remand of the Martin case, attached hereto as exhibit "O", the trial court addressed the issue of a good faith purchaser for value as instructed by the Ninth Circuit. The trial court found in pertinent part that: (1) Rubel Enterprises was a bona fide purchaser for value; (2) Rubel Enterprises had notice of 26 U.S.C. Section 6339(b)(2), which requires that the I.R.S. substantially comply with the provisions of

law before said tax deed may be considered to operate as conveyance of all right and interest of the party delinquent had in and to the real property thus sold; and (3) an invalid deed does not confer any rights upon a bona fide purchaser for value, "[a]n instrument that is void of initio is comparable to a blank piece of paper so necessarily derives no validity from the mere fact that it is recorded."

23. In summary, the IRS must strictly comply with statutory and regulatory requirements as conditions precedent to valid seizure, sale and transfer of good property deed. Failure to strictly comply imposes a duty upon this Court to render invalid the entire proceedings. The absence of literal compliance with any single enabling statutory or regulatory procedure, by itself, can and must warrant the invalidation of the sale and any issuance therefrom, i.e., the Certificate of Sale and Director's Deed. Further, the statutes and regulations must be strictly construed, construed against the United States, and in favor of the taxpayer, the Defendant herein.

**SECTION IV. CONCLUSION**

The Internal Revenue Service's failure to strictly comply with the provisions of 26 U.S.C. Section 6335 invalidates the IRS tax sale of the subject property and the Director's Deed.

**WHEREFORE**, for the foregoing reasons, this Court should forthwith declare the IRS tax sale of the subject property invalid *ab initio*, and strike the "tax Deed" of Plaintiff' from the complaint and further dismiss this action for failure to state a claim.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished this \_\_\_\_\_ day of July, 1995, to:

XXXXXXXXXXXXXXXXX  
SSSSS XXXXXX XXXXXXXXXXXX  
Coral Gables, Florida 33146  
(305) 666-2299

by: \_\_\_\_\_  
XXXX X. XXXXXXXXXXX  
XXXX XXXX XXX  
Hialeah, Florida 33014