

RECENT DEVELOPMENTS

REAL ESTATE DISCUSSION GROUP – 7/21/98

1. Proceeds of a Like-Kind Exchange Aren't Income in Respect of Decedent
(Doc. 98-22695)

H & W transferred 2 properties to a grantor trust; they then exchanged 1 of the properties in a like-kind exchange under sec. 1031; H died before the 2nd property could be exchanged; W then exchanged said property in like-kind exchange under section 1031. The Service ruled that H's share of the proceeds from the like-kind exchange was not income in respect of a decedent because the properties exchanged qualified for non-recognition treatment under Section 1031. In addition, the Service ruled that H owned 1/3 of the properties received in the exchange, and that W was entitled to a basis adjustment for the properties received in the exchange.

2. Amount Realized from House Sale Includes Discharge of Non-Recourse Note
(Donna M. Neighbors v. Commissioner, TC Memo 1998-263, Tax Ct. Dkt. #27654-96).

TP sold residence in 1991 after discharge (bankruptcy) of personal obligation to repay non-recourse note securing the mortgage; although she was discharged, portion of proceeds from sale of house were paid to the lender; she failed to purchase a replacement residence, and filed an amended return to report the gain, which she calculated by excluding the amount paid over to the lender on the note. *Held:* Discharge of any liability attached to the property must be included in the amount realized; an individual who fails to purchase a replacement residence is liable for tax on the gain from the sale of his/her residence; amount realized includes the portion of the sale proceeds used to satisfy a non-recourse note securing the mortgage.

3. Deed of Trust Were Not Extinguished By Foreclosure, Have Priority Over Subsequent Tax Lien.
(Lynn M. Ewing III v. Donald Erickson, et al., 82 AFTR2d Par. 98-5063)

Action brought to determine priority of claims to proceeds received from foreclosure sale. US District Court held that the deeds of trust had priority over the tax lien because the former were first in time; deeds of trust were not extinguished as a matter of law by foreclosure sale; Court explained that extinguishment of junior lien encumbrances by foreclosure sale is only as between the foreclosure sale purchaser and the lienholders; the sale doesn't extinguish the security K between the lender and debtors.

4. US Cannot Reach Man's Interest in Entireties Property Even After Transfer to Wife

(US v. Wilford A. Simpson, et ux et al., 82 AFTR2d Par. 98-5073, No. 3:97-cv-242/LAC)

US District Court opinion. H & W acquired Fla. real property in 1983; in 1984, H quitclaimed his interest in the property to W; 1985 IRS made its 1st tax assessment against H for 1981, and in 10/87 filed notice of tax lien; 12/87 W transferred her interest in the property to her children, and retained a life estate; intervening transfer among children occurred, and remaining was transferred to family trust, while W still held life estate; 1991-1995, IRS made more assessments against H, whose total tax debt reached nearly \$1.3 million; 1992 & 1994, notices of tax lien filed against W and children as H's nominees; all were sued in 1997 and default judgment was entered against H; remaining moved for summary judgment.

Held: For W & children. Government's request to enforce its tax lien against the property denied. Under Fla. law, no judgment lien could attach to the entireties property to satisfy the debts of the H alone, and the prop. also could not be reached by H's creditors after it was transferred to W. If transfer to W was fraudulent, prop. still held by couple as tenants by the entireties, therefore out of reach of creditors. If transfer wasn't fraudulent, W held the prop. and was free to do with it as she pleased. Either way, subsequent transfers were irrelevant.

REAL ESTATE DISCUSSION GROUP – 7/28/98

Mortgage Is Exempt From Below-Market Loan Provisions

(IRS Revenue Ruling 98-34)

“Below market 2nd mortgage is not subject to section 7872 rules for below market loans, even though it is not made available under a program of general application to the public. Factors justifying the exemption are sufficiently similar to the factors justifying the exemption of government-subsidized loans under reg. section 1.7872-5T(b)(15).”

REAL ESTATE DISCUSSION GROUP – 8/4/98

IRS Issues Final Regs on Qualified Nonrecourse Financing
(T.D. 8777; Doc. 98-24281)

New regs. effective for financing incurred on or after 8/4/98, or applied retroactively for financing before that date (when tp. must reduce the amounts at risk only to the extent the new regs increase the losses allowed for tax years ending before that date):