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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BOYD LEE STOCKHAM, et al.,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

Case No. 17-cv-03982-EMC  
**ORDER REGARDING NOVEMBER 9,  
2017 HEARING**  
Docket No. 10

At the November 9, 2017 hearing on Defendant United States of America’s Motion to Dismiss, the parties should be prepared to discuss the following issues:

1. Is there any reason why the procedure for requesting and obtaining a certificate of discharge pursuant to 26 U.S.C. § 6325(b)(4) and 26 U.S.C. § 7426(a)(4) was not a “realistic alternative,” *United States v. Williams*, 514 U.S. 527, 529 (1995), for Plaintiffs?

2. Do Plaintiffs claim the IRS, in seeking to dismiss their complaint, should be estopped from asserting Plaintiffs’ failure to obtain a certificate of discharge? *See* April 2017 Notice of Overdue Taxes, attached to Compl. as Ex. D (stating a certificate of release of federal tax lien will be filed upon payment without mentioning right to request certificate of discharge).

3. Defendant should be prepared to explain how a property is “subject to” a lien under § 6325(b)(4) if the lien may not be “valid” under § 6323(a) because it may not have been properly noticed before Plaintiffs purchased the property. *See* 26 U.S.C. § 6323(a) (a tax lien “shall not be valid as against any purchaser . . . until notice thereof . . . has been filed by the Secretary”); 26 C.F.R. § 301.6323(a)-1 (“The lien by section 6321 is not valid against any purchaser . . . until a notice of lien is filed . . . .”); 26 U.S.C. § 6323(a) (only a property owner whose property is “subject to” a tax lien may request or obtain a certificate of discharge).

4. Did Plaintiffs file, or attempt to file, any administrative claim for a refund or

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otherwise make any sort of administrative objection to the lien(s) prior to filing suit?

5. What is the prejudice to Defendant, if any, from permitting Plaintiffs to proceed with a Section 7426 claim within 120 days of obtaining a certificate of release (as opposed to a certificate of discharge)?

6. What meaning do the parties ascribe to the phrase, “No other action may be brought by such person for such a determination,” 26 U.S.C. § 7426(a)(4)?

7. What is the parties’ explanation for the discrepancy between the total amount demanded in the April 2017 Notice of Taxes Due (\$145,765.05) and allegedly paid by Plaintiffs, and the sum of the 2011 and 2015 liens according to the corresponding certificates of release (\$83,608.24)?

**IT IS SO ORDERED.**

Dated: November 8, 2017

  
EDWARD M. CHEN  
United States District Judge