

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

UNITED STATES OF AMERICA,

Petitioner,

vs.

**BRAD C. FISHER and JANET E.
FISHER,**

Respondents.

CV-07-054-H-DWM-RKS

FINDINGS AND RECOMMENDATIONS

This matter having come before the undersigned upon the Petition of the United States and accompanying Declaration, and the Court having issued a Notice and Order to Show Cause which was properly served upon BRAD C. FISHER and JANET E. FISHER, and no written objection to the Petition having been filed within 25 days of the Notice and Order to Show Cause as directed therein or at anytime thereafter, I hereby find and recommend as follows:

FINDINGS

1. The Court has jurisdiction over this proceeding under 28 U.S.C. § 1340 and 26 U.S.C. §§ 6334(e)(1) and 7402(a).
2. Through its pleadings and attachments, the United States has met the

requirements of Section 6334(a)(13) of the Internal Revenue Code and Treas. Reg. § 310.6334(d) concerning the levy on a principal residence by demonstrating that:

a. A delegate of the Secretary of the Treasury made assessments against Brad C. Fisher and Janet E. Fisher for unpaid federal income taxes, penalties, interest, and other statutory additions for the income tax years 1997, 1998, 1999, 2000, 2001, 2004 and 2005.

Assessments have also been made against Brad C. Fisher individually for unpaid federal income taxes, penalties, interest, and other statutory additions for the income tax years 2002 and 2003.

b. Despite timely notice and demand for payment of the assessments described above, Respondents have neglected or refused to make full payment to the United States, and there remains due and owing on those assessments the amount of \$1,264,992.85, as of June 30, 2007, plus interest and other statutory additions accrued thereafter as provided by law.

c. The Internal Revenue Service has followed the requirements of applicable law and administrative procedures relevant to a levy upon the Property. Final Notice, Notice of Intent to Levy and Notice of Your Rights to a Hearing along with Form 12153 and Publications 1594 and 1660 were sent to Mr. and Mrs. Fisher on September 4, 2000, April 24, 2006, December 12, 2006, and March 28, 2007. Mr. and Mrs. Fisher were informed of imminent seizure on April 30, 2007. Notices of federal tax liens with respect to the Property were properly filed.

d. The Internal Revenue Service has attempted to satisfy taxpayers' unpaid liability from assets other than the Property, has made a thorough consideration of alternative collection methods to satisfy the unpaid liabilities, has concluded there is equity in the Property sufficient

to yield net proceeds from the sale, and has concluded that no reasonable alternative exists to satisfy the unpaid tax liabilities described above.

3. Respondents Brad C. Fisher and Janet E. Fisher have failed to respond to the Order to Show Cause issued by this Court on May 29, 2008.

RECOMMENDATION

Based on the above, I recommend that the Court:

- a. grant the Petition For Judicial Approval of Levy Upon Principal Residence; and
- b. authorize the Internal Revenue Service to levy upon Brad C. Fisher's and Janet E. Fisher's interest in the property located at 1205 LeGrande Cannon Boulevard, Helena, Montana 59601 to satisfy part or all of the unpaid tax liabilities for the taxable years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005, which may be executed by any authorized officer of the Internal Revenue Service.

DATED this 8th day of October, 2008.

/s/Keith Strong
KEITH STRONG
United States Magistrate Judge