



Office of the Attorney General
Washington, D. C. 20530

OCT 13 1988

October 12, 1988

The Honorable George Bush
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Pursuant to 2 U.S.C. 288k(b), I wish to inform the Senate that the Solicitor General has determined that the United States will not appeal the judgment of the court of appeals in Verba v. Ohio Casualty Ins. Co. (6th Cir. No. 86-3803). In this case, the court of appeals held that the method of notifying creditors of an impending tax sale that is authorized by Section 6335(b) of the Internal Revenue Code does not satisfy the constitutional guarantees of the Due Process Clause.

Section 6335 of the Internal Revenue Code addresses the procedures governing IRS sales of property that was seized to satisfy a federal tax lien. In particular, Section 6335(b) states that the IRS: (1) shall give notice of the seizure and proposed sale to the owner by personal service or mailing to his last known address; and (2) shall publish a notice in a newspaper of general circulation. Thus, the statute does not require the IRS to give notice, other than by publication, to persons other than the owner, including creditors. As a result, the liens of junior lienholders may be discharged by the sale, under Section 6339(c) of the Code, without any effort having been made to notify those creditors by mail.

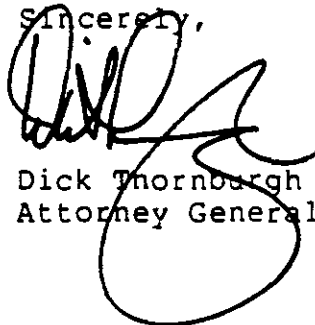
In Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983), the Supreme Court held that the Indiana procedure of using notice by publication to notify mortgagees of record of an impending tax sale did not comport with due process because it was reasonably practicable to serve those persons by mail. The IRS, in reviewing its own procedures, concluded that the Indiana scheme was not significantly different from the federal procedures and therefore that Mennonite cast substantial doubt upon whether notice in accord with the provisions of Section 6335(b) comported with due process. Accordingly, the IRS in 1984

amended its procedures to require that notice of a tax sale be mailed to each owner, transferee, nominee, and lienholder of record (both junior and senior). Thus, the question of the constitutionality of the notice provisions of Section 6335(b) has a practical impact today only in cases, like *Verba*, that involve a tax sale that occurred prior to this 1984 change in IRS procedures. After careful consideration, we have concluded that notice by publication to creditors, as authorized by Section 6335(b), cannot satisfy the due process requirements established in *Mennonite*, which clearly apply to such creditors (see Tulsa Professional Collection Services, Inc., No. 86-1961 (Apr. 19, 1988)). Accordingly, an appeal to the Supreme Court would serve no useful purpose.

The Department of Justice is, of course, fully mindful of its duty to support the laws enacted by Congress. Here, however, the Department has determined, after careful study and deliberation, that reasonable arguments cannot be advanced in the Supreme Court to defend the notice provision at issue.

If the Department can be of further assistance to you in explicating the reasons for our decision or if you or your staff believe that it would be helpful to discuss the options that the Senate may wish to pursue, Deputy Solicitor General Lawrence G. Wallace will be pleased to discuss the matter further. He can be reached at 633-2211.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dick Thornburgh', is written over the typed name. The signature is stylized and somewhat cursive.

Dick Thornburgh
Attorney General

cc: Michael Davidson
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