

*14 Comp. Gen. 131; 1934 U.S. Comp. Gen. LEXIS 206*

Comptroller General of the United States

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**Reporter**

1934 U.S. Comp. Gen. LEXIS 206 \*; 14 Comp. Gen. 131

**Comptroller General McCarl to the Secretary of the Treasury**

**Core Terms**

internal revenue, golf club, rancho, amended declaration, declaration of trust, accrue, unpaid, improvement bond, indebtedness, internal-revenue

**Headnotes**

[\*1]

INTERNAL-REVENUE TAXES -- ACQUISITION OF PROPERTY BY THE UNITED STATES

The appropriation for collecting the internal revenue may not be charged with unpaid amounts on improvement bonds constituting a lien on property in which the United States may have acquired a beneficial interest in the compromise of tax claims. The authority of the United States to acquire property at a tax sale, and/or the payment of State taxes thereon to the date of such acquisition, do not extend to the holding of property by officers of the United States as trustee in the nature of an investment, nor to the operation of properties under the direction or control of others than those acting for the Government, but the United States should take such action as may be necessary through distraint and other proceedings to sell property for the collection of taxes so that the property may be transferred to private owners and made available for the payment of future accruing taxes.

**Opinion**

Consideration has been given to your letters of April 5 and July 9, 1934, as to whether the appropriation "for collecting the internal revenue" may be charged with an amount of

approximately \$15,060.69 at this time as payment of principal [\*2] and interest on certain special improvement bonds issued on the Rancho Golf Club near Los Angeles, Calif., which premises were conveyed to the Commissioner of Internal Revenue under a deed of trust by the Rancho Golf Club; Twelfth and Michigan Building Corp.; Ambassador Hotel and Investment Corp.; and Nomis-Suarts Corp., as security for the payment of \$826,703.84 taxes under a compromise agreement with the Straus Co. which you have stated financially collapsed and is unable to pay the amount of taxes due the Government; you have reported that the financial affairs of the company are so involved that according to the best information available the United States will receive nothing from the estates in receivership to satisfy its compromise claim.

You have reported that the Rancho Golf Club property contains approximately 185 acres, with assessed valuation in 1933 of \$347,610 located on Pico Boulevard in the vicinity of Los Angeles; that the property had been appraised in October 1933 as having a value of \$500,000; that it was taken under the deed of trust in an attempt to protect the interests of the United States as to the unpaid taxes of Straus & Co., Inc.; that on or about January [\*3] 1, 1934, an attempt was made to sell the property, when it appeared that it could not be sold at that time for a fraction of its true value; that the holders of matured improvement bonds are threatening judicial proceedings to enforce their lien for unpaid principal and interest, and that it is thought necessary for the United States to pay such holders of improvement bonds, in an aggregate sum of approximately \$52,000, an amount aggregating \$15,060.69 at this time in order to temporarily protect the lien of the Government for the taxes.

The record discloses that by a declaration of trust dated April 12, 1933, which was signed by the then Commissioner of Internal Revenue only, it was recited that S.W. Straus & Co., Inc., was indebted to the United States in the sum of \$826,703.84, representing the balance of an offer submitted by said company under date of February 17, 1931, and accepted March 19, 1931, in compromise of its tax liability for the years 1920 to 1925, together with interest thereon at the rate of 6 per centum per annum from February 17, 1931. Also, that S.W. Straus & Co., Inc., was liable to the United States in the sum of \$116,016.98, together with interest thereon [\*4] at the rate of 6 per centum per annum from March 15, 1927, under a contract dated February 17, 1931, with the United States. It was further recited in this declaration of trust that the Twelfth & Michigan Building Corporation and Rancho Golf Club, respectively, granted to the United States of America liens on certain properties as security for the indebtedness and that the properties had been conveyed to the Commissioner of Internal Revenue and his successors in office as trustee. The trustee agreed to hold the property to January 1, 1934, unless the indebtedness of the S.W. Straus & Co., Inc., for taxes should be sooner paid, and that the trustee should pay all taxes and special assessments which should accrue in the meantime; that the Twelfth & Michigan Building Corporation and Rancho Golf Club should manage the properties until

January 1, 1934, collecting the income therefrom, paying all necessary expenses of the management; and turning over to the Commissioner of Internal Revenue all surplus, if any, over and above the expenses and upkeep, to be applied against the indebtedness. It was further provided in the declaration of trust that the trustees themselves might sell either [\*5] or both of the properties described, at public sale, to the highest bidder and apply the proceeds of such sale, first to the payment of any expenses incurred in connection with the sale and second, toward the payment of the indebtedness to the United States; the excess, if any, to be paid over to the Twelfth & Michigan Building Corporation and the Rancho Golf Club. There were certain other terms stated in the declaration of trust, but it is unnecessary to consider at this time whether this declaration of trust, not having been signed by the Twelfth & Michigan Building Corporation and/or the Rancho Golf Club, but only by the Commissioner of Internal Revenue, constituted any legal obligation -- either on the owners of the property or with respect to the United States.

This declaration of trust was amended in an agreement "this day of January 1934", which was signed by the Commissioner of Internal Revenue as trustee; Rancho Golf Club; Twelfth & Michigan Building Corporation; Ambassador Hotel & Investment Corporation; and Nomis-Suarts Corporation. There is recited in the amended declaration that the Ambassador Hotel & Investment Corporation was the owner of all the capital stock [\*6] of the Rancho Golf Club and that the Nomis-Suarts Corporation was the owner of all the capital stock of the Ambassador Hotel & Investment Corporation and of all the capital stock of the Twelfth & Michigan Building Corporation. It may be -- but that questions is not now determined -- that the amended declaration of trust being signed by the holding corporations and the Rancho Golf Club and Twelfth & Michigan Building Corporation corrected any defects in the original declaration of trust by reason of the omission of signing. It is to be noted, however, that the amended declaration of trust was not signed by the indebted taxpayer, the S.W. Straus & Co., Inc.

However this may be, the amended declaration of trust provided that the Commissioner of Internal Revenue, as trustee, would make no sale or conveyance of the properties prior to January 1, 1937, without the written consent of the Rancho Golf Club as to the golf club property and of the Twelfth & Michigan Building Corporation as to parcel A, consisting of certain real estate in Chicago, and of Samuel J. T. Straus, Chicago, Ill., or in the event of his death or disability, by certain other named members of the Straus family. It [\*7] was further provided in this amended declaration of trust that during the period prior to January 1, 1937, the trustee should collect the income derived from the operation of the properties and should pay out of said income all the necessary expenses of operating the same, including any franchise taxes incidental to maintaining the corporate existence of the Rancho Golf Club and the Twelfth & Michigan Building Corporation. Any surplus remaining, together with the net proceeds of sale, are required to be credited, first, to the payment of all advances made by the trustee, and, second, to the tax liabilities of S.W.

Straus & Co., Inc., to the United States. It was further provided in this amended declaration of trust that the trustee, the Commissioner of Internal Revenue, shall have the right to pay out of any funds available to him for such purpose any special assessment, taxes, liens, or other charges which may be lawfully levied or assessed against these properties or any part thereof, and be entitled to reimbursement therefor out of the surplus income derived from the operation of the properties or out of the proceeds of the sale of such properties, and there are certain other [\*8] terms of the amended declaration of trust which are not here material.

In other words, one of the apparent purposes of the amended declaration of trust is to impose upon the United States, if possible, the legal responsibility of making all payments necessary to maintain the properties in *statu quo*, including all State and municipal taxes, payment of the special assessment bonds in an amount aggregating approximately \$25,000 with interest, and the expenses of running the properties, with a possibility that the United States might be able to recoup these expenditures, if made, in event the properties should be sold for a sufficient amount in excess of the special improvement bonds, with accrued interest, local taxes, and the tax liability of S.W. Straus & Co., Inc., to the United States. The market value of the Chicago real estate has not been shown, but, as above stated, it is reported that the Rancho Golf property had an assessed valuation of \$347,600 for 1933, which indicated a market value of \$695,225 for the property. This is somewhat doubtful in view of the fact that the property has been rented for \$6,000 a year plus 25 per centum of the amount by which the gross revenue [\*9] exceeds \$2,500. But, however, this may be, it is evident that unless the Chicago real estate has considerable value, there is little, if any, possibility of the United States being able to secure from the sale of the property any substantial amount of the admitted tax liability of S.W. Straus & Co. to the United States in the two sums of \$826,703.84 and \$116,016.98, with accrued interest, to say nothing of the cash outlays for this first installment of \$15,060.69 on the improvement bonds, with a possibility that in event such payment is made, the Government may be required to not only pay the balance of some \$52,000, with accrued interest on such bonds, but local taxes and expense of maintenance, etc., during the interim.

However, regardless of whether the declaration of trust as amended represents reasonable security for the unpaid taxes, with reasonable possibility that the United States may at some future time be able to recoup all of its expenditures and a substantial part of the unpaid taxes from the income or proceeds of sale of the properties, it is an elementary rule -- obtaining since the act of March 3, 1809, now section 3678, Revised Statutes -- that all sums appropriated [\*10] for the various branches of the public service shall be applied to the objects for which they are respectively made and for no other. The appropriation for collecting the internal revenue provides funds:

\* \* \* For expenses of assessing and collecting the internal-revenue taxes, including the Commissioner of Internal Revenue, general counsel for the Bureau of Internal Revenue, an assistant to the commissioner, a special deputy commissioner, three deputy commissioner, one stamp agent (to be reimbursed by the stamp manufacturers), and the necessary officers, collectors, deputy collectors, attorneys, experts, agents, accountants, inspectors, clerks, janitors, and messengers in the District of Columbia, the several collection districts, and the several divisions of internal-revenue agents, to be appointed as provided by law, telegraph, and telephone service, rental of quarters outside the District of Columbia, postage, freight, express, necessary expenses incurred in making investigations in connection with the enrollment or disbarment of practitioners before the Treasury Department in internal-revenue matters, expenses of seizure and sale, and other necessary miscellaneous expenses, [\*11] including stenographic reporting services, and the purchase of such supplies, equipment, furniture, mechanical devices, law books and books of reference, and such other articles as may be necessary for use in the District of Columbia, the several collection districts, and the several divisions of internal-revenue agents, \* \* \*.

As will be noted, there is nothing in the appropriation for collecting the internal revenue which would permit the funds therein provided being charged with unpaid amounts on improvement bonds constituting a lien on property in which the United States may have acquired a beneficial interest in the compromise of tax claims. The general authority of the Commissioner of Internal Revenue is to distrain on property to enforce payment of internal-revenue taxes, see sections 3196, 3207, and 3208, Revised Statutes, and there is no intendment in any of these statutes that in order to collect the internal revenue the United States should become the owner or one of its officers, the trustee, or operator, either directly or under lease, of vast properties, with continuing and contingent liability which cannot be predetermined with any degree of certainty. On the contrary, [\*12] the intendment of the statutes is that the United States shall take such action as may be necessary through distraint and other proceedings to sell property for the collection of taxes so that the property may be transferred to private owners and made available for the payment of future accruing taxes. See act of March 4, 1931, *46 Stat. 1528*. Moreover, through distraint proceedings and sale of the properties in question, it is possible that there would be eliminated some of the charges now accruing against such properties, particularly local taxes, in event the United States should be compelled to purchase the property in order to protect its lien and at not exceeding the fair market value of the property, whatever that may be. The trust agreement, in substance, makes the Commissioner of Internal Revenue a receiver for the operation of the property, which is a matter of judicial jurisdiction and further undertakes to restrict the receiver or Commissioner from making sale prior to January 1, 1937, and without the consent of some

of the interested parties; which, of course, may not be and would conflict with the duties of the Commissioner of Internal Revenue to function for the United [\*13] States.

The Authority of the United States to acquire property at a tax sale ( [\*Neilson v. Lagow\*, 53 U.S. 98, 12 How. 98, 13 L. Ed. 909](#), and act of March 4, 1931) and/or the payment of State taxes thereon to the date of such acquisition, do not extend to the holding of property by officers of the United States as trustees in the nature of an investment; nor to operate properties under the direction or control of others than those acting for the Government; that is, in the hope that the real-estate market may improve and that the sale of the property at some future date may result in sufficient proceeds to not only discharge prior liens but to pay the Government the unpaid taxes on such property when the holding of such property would require the Government to make cash outlays in payment of improvement bonds, accruing State taxes, and other similar charges against the property. You are informed that no facts have been presented to show that it is necessary to protect the interests of the United States -- or that the interests of the United States are otherwise served -- through payment of the bonds and interest aforesaid.

Answering your question specifically, you are advised that the appropriation [\*14] for collecting the internal revenue is not available for making the payments in question of unpaid interest and principal in satisfaction of the improvement bonds which have now matured on the Rancho Golf Club property.