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**THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

 v.

 BOBBY BOYE, aka
 Bobby Ajiboye, aka Bobby Aji-Boye,

 Defendant.

: Case No. 15-196 (FLW)
 :
 : **MEMORANDUM OF LAW IN SUPPORT**
 : **OF PETITION TO DECLARE**
 : **PRIORITY OF TAX LIEN AND PERMIT**
 : **PETITIONER TO FORECLOSE**
 :
 : Return date: June 5, 2017

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Introduction

This matter involves Notice of Forfeiture and Order of Forfeiture entered by this Court in October, 2015. The above-named Defendant was convicted of certain crimes and as a result was subject to the forfeiture laws of the United States under 21 *U.S.C.A.* § 853. On April 26, 2017, the U.S. Attorney’s Office, through Jafer Aftab, Esq., provided notice to petitioner Public Tax Investments, LLC (“PTI”), in accordance with third-party claimant procedures, and requested

that any legal interest be voiced by way of petition for hearing to adjudicate the validity of said interest under 21 *U.S.C.A.* § 853(n). This petition of PTI is submitted in response.

I. The subject property and the unpaid taxes.

Defendant Bobby Boye, by way of Notice of Forfeiture dated July 16, 2015, is subject to an order of forfeiture of certain property, inclusive of: 140 Grove Street, Elizabeth NJ, also identified as Block 13, Lot 604, on the municipal tax map of the City of Elizabeth, Union County, NJ, commonly referred to as 142-144 Grove Street, Elizabeth, NJ (the “Property”). It is understood that said Property is owned by either said Defendant or an entity controlled by him, including Opus & Best, LLC. On June 8, 2015, the tax collector for the City of Elizabeth advertised and sold at public tax sale within the City of Elizabeth the Tax Sale Certificate #14-00451 (hereafter “TSC 14-451”) against the Property, for unpaid municipal taxes for the years 2013 and 2014. At this public sale, PTI was the winning bidder who paid the outstanding taxes of approximately \$30,249.40 (including principal, interest and costs of the public tax sale), and PTI was issued TSC 14-451 and duly recorded the same with the Union County Clerk’s Office on September 10, 2015, at Book 13982, Page 0342. A true copy of said recorded TSC 14-451 is attached to the Velasquez Certification at **Exhibit A**.

PTI also paid to the municipal tax collector, pursuant to law and specifically *N.J.S.A.* 54:5-60, subsequent taxes due on the Property. As a result, PTI is afforded and entitled to redemption that shall include said additional and subsequent taxes paid.

II. The tax lien remains open and unpaid, and Petitioner’s rights are superior by statute.

Said TSC 14-451 remain open, unpaid and unsatisfied as of the current date. No legal party has redeemed under *N.J.S.A.* 54:5-54. Parties with a legal right of redemption under said statute are: (a) owners, (b) mortgage holders, and/ or (c) prior tax sale certificate holders. No such parties have redeemed in this matter, to date.) Within 3 days of the return date of this petition on June 5, 2017, the petitioner PRI shall be entitled on June 8, 2017, to file a tax

foreclosure action with the NJ Superior Court in accordance with *N.J.S.A.* 54:5-86, provided that no redemption occurs on or before such date.

Pursuant to 26 *U.S.C.A.* §§ 6323(b)(6) and 6324, PTI is afforded by virtue of the above stated tax lien (TSC 14-451) first priority against all other liens including federal tax liens and encumbrances. The public policy behind this statute is based upon the fact that municipal taxes and obligations come first. While a federal entity (including the IRS, the Department of Justice or other federal agency with a lien or encumbrance) is entitled to its rights, the law declares that in accordance with *N.J.S.A.* 54:5-87, such federal interests may be named and foreclosed by a tax lien holder under the NJ Tax Sale Act, *N.J.S.A.* 54:5-1 et seq., provided that the special procedures for naming and noticing the United States and proceeding to judicial sale are satisfied. *N.J.S.A.* 54:5-87. The United States may have an interest in said Property by virtue of its forfeiture action referenced above, but said forfeiture interest is inferior to the right of PTI by virtue of its TSC 14-451 and its right to either (a) be redeemed in full or (b) foreclose upon the same. PTI's tax foreclosure action requires a judicial sale under *N.J.S.A.* 54:5-87, and if upon such judicial sale there are surplus funds placed on deposit with the Union County Sheriff's Office, then the United States may lay claim to such surplus funds to satisfy its forfeiture, subsequent to PTI being paid in full for complete redemption and satisfaction of the tax lien.

The forfeiture laws at 21 *U.S.C.A.* § 853(n) says that this U.S. District Court may determine, by a preponderance of the evidence, that the petitioner has an interest in the property that is vested and superior to any right, title or interest of the Defendant, or is a bona fide purchaser for value of such interest, or was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture. If so, then the statute says this Court shall amend the forfeiture in accordance with such determination. This is the relief currently sought, since petitioner PTI is an unrelated, third-party buyer at a public tax sale in June, 2015, had no knowledge or notice of said forfeiture (said forfeiture post-dating the public tax sale by over 1

month), and paid full value to the municipal tax collector for said taxes and subsequent taxes to benefit the subject Property. Petitioner PTI is entitled under law to redemption of said amounts under *N.J.S.A.* 54:5-1 et seq., and if no such redemption occurs within 2 years then in accordance with *N.J.S.A.* 54:5-86, PTI is entitled to file a tax foreclosure in the standard course.

PTI hereby petitions this U.S. District Court and seeks enforcement of its rights so as to declare the priority of TSC 14-451 over the forfeiture Order, and to permit PTI to pursue, upon expiration of 2 years from date of public tax sale (which expires here on June 8, 2017) its State tax foreclosure action against said Property and all parties laying claim in right, title and interest to the Property, under the procedures and requirements of said tax foreclosure laws, *N.J.S.A.* 54:5-1 et seq., subject to redemption of the same by any legal party under *N.J.S.A.* 54:5-54. This includes the right to name and notice the United States for any interest it may have by virtue of the forfeiture order. If any legal party redeems petitioner's TSC 14-451 prior to or during the petitioner's tax foreclosure process, then the forfeiture Order of the United States shall remain in full force and effect, and petitioner's TSC 14-451 shall be cancelled and recorded with the Union County Clerk's Office as satisfied and paid. But until such time, petitioner must be afforded the right to pursue its tax foreclosure in accordance with all other rights, entitlements, obligations and procedures that are generally applicable to State tax foreclosures.

Conclusion

For these reasons, we respectfully request that this Court enter the proposed form of Order submitted herewith, confirming the legality and priority of Tax Sale Certificate #14-00451.

Respectfully submitted,

/s/ Anthony L. Velasquez, Esq.
Anthony L. Velasquez, Esq.

May 1, 2017