Third-Party Federal Tax Liens and Levies and How to Fight Them

By David Lee Rice, Dennis N. Brager and Russell M. Ozawa

Panelists David Lee Rice, Dennis Brager, Robert McKenzie and Russell Ozawa examined IRS collection efforts using liens and levies.

It appears that the days of the gentler and kinder IRS are now nothing more than distant memories. The IRS has put teeth into Circular 230, increased the amount of audits, and has become extremely aggressive with respect to targeting those taxpayers who have failed to pay their tax liabilities. A couple of tools the IRS has in its collection arsenal are liens and levies, and the IRS is not only using these tools, but is overly aggressive in their application.[1] In fact, until 2011, the IRS was automatically filing liens when just over $5,000 in tax was due. Finally, on February 24, 2011, the IRS started a new program entitled "fresh start" which included changes to automatic lien filings. As a result of the enactment of that program automatic lien filing went from $5,000 to $10,000, and the IRS offered a number of other initiatives to remove liens, and to make other taxpayer friendly changes.[2] However, at the same time the IRS ramped up its collection efforts using nominee liens and levies, as well as their counterparts, the alter ego, transferee, and fraudulent conveyance liens and levies. Unfortunately these liens and levies lack Collection Due Process (CDP) rights upon which tax practitioners and their clients have come to rely.[3]

David Lee Rice, Esq., is the sole shareholder of David Lee Rice, APLC, and a Professor, heading up the Tax Program at Cal Poly Pomona's College of Business, Department of Accounting. Mr. Rice is a Certified Tax Specialist with the State Bar of California Board of Legal Specialization and is currently Chair of the ABA's Income and Family Tax Section Committee.

Dennis N. Brager, Esq., is a former IRS Trial Attorney and the Founder of Brager Tax Law Group, A.P.C. in Los Angeles. The firm's practice is limited to representing clients with criminal and civil tax disputes with the IRS and the California taxing authorities.

Russell M. Ozawa, Esq., is an Associate at David Lee Rice, APLC, in Torrance, California.

Federal Tax Liens and Levies

Before a federal tax lien comes into existence, an assessment is made by the IRS by recording the liability in the office of the Secretary.[4] Notice of the assessment along with a demand for payment is sent to the taxpayer within 60 days of the assessment.[5] If the taxpayer neglects or fails to pay the obligation, a lien automatically arises.[6] The federal tax lien relates back to the date of assessment, and extends until the liability for the assessed amount is satisfied, or until it becomes unenforceable by passage of time, generally ten years from the assessment date.[7] The federal tax lien attaches to all of the taxpayer's property and rights to property, including after acquired property.[8] A federal tax lien does not attach, however, to property properly transferred from a taxpayer prior to the creation of the lien.[9] If a taxpayer's property is not in the possession or in the name of the taxpayer, or if the taxpayer has transferred property, the IRS may employ one or more theories to reach property—namely, nominee, alter-ego and transferee liability.

The scope of property and rights to property are governed by state law. If there is a property interest recognized under state law, the lien attaches to it. Federal law determines the manner and extent to which the federal tax lien encumbers a taxpayer's property interest.[10] A general tax lien attaches virtually to all of the taxpayer's property as of the date of assessment or acquired thereafter as long as the lien is in effect. Code Sec. 6321 provides that the lien attaches to all of the taxpayer's property, and there are no exemptions, although certain types and amounts of property are exempt from levy.[11] If property to which the lien attaches is transferred, it is transferred subject to the lien. However certain third parties are protected, unless the IRS has previously filed a Notice of Federal Tax Lien (NFTL).[12] In some situations, third parties are protected even after the IRS has filed its Notice of Federal Tax Lien.[13]

In addition to the creation of federal tax liens, Code Sec. 6331 allows the IRS to levy upon property, including rights to property, if a taxpayer liable to pay taxes refuses to pay within 10 days of notice and demand.[14] The IRS must also provide written notice of intent to levy at least 30 days before the actual levy.[15] This later notice is titled "Notice of Intent to Levy, and Your Right to a Hearing." If the taxpayer requests a hearing before the IRS Office of Appeals, *i.e.,* a Collection Due Process Hearing, then the IRS is generally not permitted to levy during the pendency of the hearing.[16]

The IRS may also seek judicial determination to collect unpaid taxes. Under Code Sec. 7402, a suit may be brought to reduce the tax claim to judgment, which may extend the period of time to collect the tax. Under Code Sec. 7403, the IRS may foreclose on the federal tax lien, subjecting the property to payment of the tax. Typically, a foreclosure suit is brought if there is specific property to pay all or part of the tax. A federal tax lien may be foreclosed against property held by a transferee, nominee or alter-ego when the taxpayer is the equitable owner of the property. The IRS may also bring suit to enforce a levy.[17]

As noted above, the IRS employs several theories to reach property held in the name of a third party. Although these theories may overlap, and the IRS and the courts sometimes lump them together as if they were a single concept, each of the theories has its own rules. In essence, the IRS may list all theories, which is not only confusing, but may result in the taxpayer having to spend more money to defend against the wrongful theories.

Transferee Liability

The government may seek to collect a taxpayer's unpaid tax, penalty or interest by asserting transferee liability if a taxpayer (transferor) has transferred property to another person or entity (transferee), and a substantive provision of law provides the ability to assert liability against the transferee based on the transfer.[18] Transferee liability does not create a new liability, but rather, it provides the government with a secondary method to collect the transferor's tax liability. The IRS may proceed either administratively or judicially to collect the tax from a transferee.[19] Code Sec. 6901 and Code Sec. 6212 allow the IRS to issue a Notice of Transferee Liability, and the alleged transferee may dispute the liability in the United States Tax Court.

Procedures Under Code Sec. 6901

Code Sec. 6901 is a procedural statute for collection—a remedy for recovering the unpaid taxes of the transferor—where a basis exists for holding the transferee liable at law[20] or equity. Code Sec. 6901 does not create or define a substantive liability; it merely provides a remedy for enforcing the existing liability of the transferor.[21] The IRS is not bound to proceed under Code Sec. 6901, and may use other collection remedies.[22]

After a Notice of Transferee Liability is mailed to the last known address of the person subject to liability, that person may file a petition in the United States Tax Court. The liability is assessed if the Commissioner prevails or no petition is filed. Once the liability is assessed, the IRS may use the same collection tools available as if the IRS were collecting directly from the taxpayer. Transferee liability under Code Sec. 6901 is limited to those taxes subject to deficiency proceedings (*i.e.,* income tax, estate tax or gift tax), or against a transferee with respect to other taxes of the transferor if the transferee's liability arises out of the liquidation of a partnership or corporation or out of a corporate reorganization under Code Sec. 368(g).

Unlike nominee liens, discussed *infra*, a transferee may challenge not only the transferee determination, but also the transferor's liability for the tax. While the IRS bears the burden of establishing the transferee liability, the IRS does not hear the burden of establishing the transferor's tax liability.[23] However, if there has already been a judicial determination of the underlying tax liability, the decision will preclude the transferee's challenge of the actual tax liability. Transferee liability is established by the IRS on the same grounds under Code Sec. 6901 as in a suit in District Court that is discussed below.

The limitations period for the IRS to proceed under Code Sec. 6901 varies. The limitations period for issuing a Notice of Liability for a transferee is one year after expiration of the assessment period for the transferor.

However, if there is a judicial collection proceeding against the transferor, the assessment period expires one year after the determination in the court proceeding. The limitations period for a transferee of a transferee is one year after expiration of the assessment period for the initial transferee, but no more than three years after expiration of the assessment period for the transferor. However, if there is a judicial collection proceeding against the transferor or prior transferee, the assessment period expires within one year after the determination in the court proceeding. Lastly, the limitations period against a fiduciary is one year after the later of date the fiduciary liability arises or the collection period for the subject tax.[24]

If an assessment is made against a transferee under Code Sec. 6901 for the transferor's liability, the transferee becomes the taxpayer.[25] The transferee is then entitled to a Notice of Tax Lien Filing and Right to CDP Hearing.[26] The transferee may request a CDP hearing if he or she disagrees with the filing of a Notice of Federal Tax Lien. The transferor will not receive a copy of the Notice of Federal Tax Lien.

IRS Guidelines for Filing a Transferee Notice of Federal Tax Lien

Code Sec. 6901 provides significant protection to a putative transferee requiring the IRS to prove in court that transferee liability exists. However, the IRS is not limited to Code Sec. 6901, and may proceed by simply filing a lien against the alleged transferee. A transferee lien will be filed if it is established that there has been an actual transfer of property—title, use and control of the property—but the taxpayer received no consideration for the transfer. Written approval of Area Counsel is required before filing a transferee lien.[27] This requires a determination of fraudulent conveyance or transferee liability.[28]

Before Area Counsel approves the filing of a transferee lien, Area Counsel is urged to consider or do the following[29]:

- Cases should be developed to withstand court challenge.
- Focus on the conveyance of the title.
- Requests should be for advice as to the need for a supplemental assessment, a new notice and demand and the language incorporated in the Notice of Federal Tax Lien or levy.
- Prepare a report containing all of the facts of the case to accompany the request.

If the IRS proceeds in this manner the alleged transferee's options are limited, and parallel the remedies available to alleged nominees or alter egos discussed below.

Fraudulent Conveyance Suits in District Court

Instead of issuing a Notice of Transferee Liability under Code Sec. 6901, the IRS may bring suit in the federal district court.[30] The IRS may elect to initiate lawsuits either to set aside a fraudulent conveyance or to establish transferee liability. In a suit to set aside a fraudulent conveyance, the government merely requests the court set aside the conveyance and allow the IRS to proceed against the asset. However, in a suit to establish transferee liability, the IRS seeks a judgment against the recipient for the value of the property at the time of the alleged fraudulent transfer. In no event may the IRS recover more than the value of the property that was transferred to the Transferee.

A suit may be based either upon state fraudulent conveyance rules, or under the Federal Debt Collection Practices Act (FDCPA).[31] Many states have adopted the Uniform Fraudulent Conveyance Act and, in such states, the IRS uses it extensively to establish the elements of its case. A suit may be brought within the 10-year collection limitations period under Code Sec. 6502, even though the state statute of limitations on transferee liability may be shorter.[32]

In most jurisdictions, two distinct types of fraud are recognized—actual and constructive. Generally, the elements of constructive fraud are (1) a gift or sale for less than fair market value, (2) a then-existing or contemplated indebtedness against the transferor (*i.e.*, accrual of a liability not assessment), and (3) a retention of insufficient property by the transferor to pay his indebtedness (insolvency). The IRS is not required to establish an evil motive to assert constructive fraud.[33] In California, Civil Code § 3439.05 provides that

> … a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time, or the debtor became insolvent as a result of the transfer or obligation. …

Actual fraud is an independent ground for setting aside a transfer. State law may list "badges of fraud" from which actual fraud can be inferred. For example, California Civil Code § 3439.04(b) lists badges of fraud, including but not limited to whether the transfer or obligation was to an insider, whether the debtor retained possession or control of the property transferred after the transfer, whether the transfer or obligation was disclosed or concealed, whether the debtor absconded, whether the transfer was of substantially all of the debtor's assets, and whether the debtor removed or concealed assets. Courts have also enumerated badges of fraud including:

- inadequacy of consideration, insolvency of transferor;
- transfer of all or nearly all of debtor's property;
- close relationship between parties to the transfer;
- transfer made in anticipation of a tax or during the investigation of a deficiency;
- transaction not in the usual course of business;
- reservation of any interest in the property transferred;
- retention of possession;
- a transaction surrounded by secrecy;
- false or incorrect recital of consideration;
- failure of transferee to produce evidence to rebut an accusation of fraud;
- false entries in books of transferor or transferee;
- unusual disposition of the consideration received for the property; and
- assessment of the property for state tax purposes to transferor rather than transferee.

Proof of actual fraud is sufficient to set aside a transfer made *before* or after the debt arises. On the other hand constructive fraud is generally available only to set aside a transfer made *after* the debt arises. That is, in order for the IRS to pursue either a judicial or administrative determination based on constructive fraud, the conveyance must have occurred subsequent to the accrual of a tax liability.[34] If the taxpayer has conveyed property prior to the accrual of the tax, the IRS has no cause of action against the transferee unless it can prove actual fraud.

Nominee and Alter-Ego Liens

Nominee Liens

A tax liability may be collected from a taxpayer's property held by a nominee.[35] In a nominee situation, the transfer is "in name only." That is, the taxpayer places his or her assets in the name of another person or entity, but control of the assets and other incidents of ownership remain with the taxpayer.[36] Generally, specific property being held by a nominee must be identified and listed on a notice of federal tax lien filed against the nominee (nominee lien).[37] Oftentimes, the difference between a fraudulent conveyance and a nominee situation can overlap. However, a nominee situation is one in which the conveyance is not intended to divest the transferor of rights, whereas in fraudulent conveyance situations, there is no "simulated" transfer and it is intended to divest the taxpayer of his or her rights.

Property that is transferred by a taxpayer to a nominee is subject to collection of the taxpayer's liability.[38] A taxpayer may not, by placing the property in the name of someone else, avoid the reach of a tax lien, since there has not been a true transfer. In such instances, courts have ignored the fact that the property is in another person's name. The IRS may file a nominee lien with respect to the property held by the nominee. The nominee lien is filed in the name of the nominee only with respect to the taxpayer's property held by the nominee. The property is subject to the tax liability of the taxpayer, not of the nominee. The nominee lien is distinguishable from the transferee lien, which is applicable where there has been a transfer of title and a transfer of use and control for inadequate consideration.

Although there is no statutory authority for nominee liens, the Supreme Court has sanctioned their use.[39] The government bears the burden of proving the nominee status by a preponderance of the evidence.[40] Factors considered in making this determination include:

- no consideration or inadequate consideration paid by nominee;
- property placed in nominee's name in anticipation of a suit or the occurrence of liabilities while the transferor continues to exercise control over the property;
- close relationship between transferor and nominee;
- failure to record conveyance;
- retention of possession by the transferor; and
- continued enjoyment of benefits of the property by the transferor.

The amount of the nominee's liability lien is limited to the fair market value of property transferred. The IRM provides procedures for the filing of nominee liens without the requirement of a court order. The Collection Division must secure the prior approval of Area Counsel first.[41] Revenue Officers are advised to consider the following circumstances in making the nominee lien determination:

- The taxpayer is paying maintenance expenses.
- The taxpayer is using the property as collateral for loans.
- The taxpayer is paying state and local taxes on the property.
- The taxpayer has the use or benefit from the property.
- Other relevant facts.[42]

Subsequent to the approval of Area Counsel, the IRS files a lien against the putative nominee. The IRS may also proceed to seize assets held by an alleged nominee. The alleged nominee is then forced to bring a quiet title action for his or her property if the IRS refuses to administratively release the lien.[43] Practitioners should not be shy about requiring the IRS to carry its burden of proving that property is held as a nominee by bringing a quiet title action. Many practitioners believe that the IRS has abused the nominee lien on many occasions and prior to the enactment of the Taxpayer Bill of Rights could do so without fear of judicial sanctions.[44]

Alter-Ego Liens

A tax liability may also be collected from a taxpayer's alter-ego. "Alter-egos" connote legally distinct entities that are so intermixed that their affairs (and assets) are not readily separable.[45] For years it had been believed by most practitioners that state law determines the existence of alter-ego liability.[46] However, the IRS has relatively recently taken the position that federal common law, rather than state law, governs alter ego status.[47]

According to the IRS, reliance on state law property rights yields potentially different alter-ego determinations depending on the state in which the property is located, an outcome that it argues cuts against the uniform enforcement of federal tax laws.[48] The IRS contends that if an entity is a taxpayer's alter-ego, then it is appropriate to regard all of the entity's assets as the taxpayer's property for federal collection purposes.[49] The IRS takes the position that, unlike transferee liability under Code Sec. 6901, the alter-ego doctrine does not impose a defaulting taxpayer's liability on another person, but treats an entity as the taxpayer for tax collection purposes.[50] According to the IRS, the alter-ego question does not concern property rights but rather goes to the identity of the taxpayer who is liable for the tax.[51] As a result, the IRS is encouraging its attorneys to argue, in court, that a federal common law alter-ego analysis is the appropriate and best way for courts to resolve alter-ego claims in federal tax collection cases along with undertaking the two-step state and federal alter-ego analysis in the alternative.[52]

The IRS believes that factors to be considered in determining whether an alter-ego situation is present include the following:[53]

- Commingling of corporate and personal finances and use of corporate funds to pay personal expenses
- Unsecured interest-free loans between the corporation and the shareholder
- The taxpayer is a shareholder, director or officer of the corporation, or otherwise exerts substantial control over the corporation
- The corporation is undercapitalized relative to its reasonable anticipated risks of business
- A failure to observe corporate formalities (*e.g.,* issuance of stock, payment of dividends, director or shareholder meetings, or maintenance of corporates records)
- A failure to disregard the corporate fiction presents an element of injustice or "fundamental unfairness"

In California, courts require that two conditions to be met before the alter-ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.[54] In determining whether an alter-ego exists, California courts consider many factors including:[55]

- an individual's ownership of all stock in a corporation;
- use of the same office or business location;
- commingling of fund and other assets of the individual and corporation;
- an individual holding out that he is personally liable for the debts of a corporation;
- identical directors and officers;
- failure to maintain minutes;
- disregard of corporate formalities;
- inadequate capitalization; and
- use of corporation as a mere shell, instrumentality or conduit for the business of the individual.

Procedural Safeguards for Alleged Nominees and Alter-Egos and Taxpayers

Both the taxpayer and a nominee are entitled to certain notice and appeal opportunities. If a nominee or alter-ego lien is filed, the person identified as the nominee or alter-ego is not entitled to appeal under Collection Due Process (CDP) procedures.[56]

The nominee or alter-ego may appeal under the Collection Appeals Program (CAP) provisions after the lien has been filed.[57] The nominee or alter-ego cannot challenge the underlying tax liability. In the view of the authors, most settlement officers refuse to take an activist role because Area Counsel has already reviewed and signed off on the lien. The legal title holder of property which has been subjected to a nominee levy may also file an application for return of property under Code Sec. 6343(b). Because CAP proceedings often will not result in a release of a lien or levy, alleged nominees and alter-egos usually must bring a suit to quiet title or file a wrongful levy claim against the government under Code Sec. 7426(a) if property has been seized.[58]

A taxpayer, on the other hand, whose liabilities for which the nominee liens were filed is entitled a CDP hearing if he or she has not received CDP notification previously for the identified periods.[59]

Judicial Remedies for Third Parties

If the government has wrongfully levied or seized property held by an individual (often a person wrongfully classified as a nominee or transferee), then he or she has several alternatives other than the previously mentioned quiet title suit.

Wrongful Levy Actions

If the IRS has wrongfully levied on the property of a third person (*i.e.*, not the taxpayer), the Internal Revenue Code provides for an injunction to prohibit the enforcement of the levy or to prohibit the sale of the property if the levy or sale would cause irreparable injury to that person's rights and property.[60] Alternatively, a wrongful levy suit may be brought within nine months from the date of the levy, except in cases where the owner makes a timely written request for the return of the property pursuant to Code Sec. 6532(c). The filing of an administrative request extends the nine-month period of limitations for an additional period that is the shorter of 12 months from the date of filing the request or six months from the date of mailing by registered mail or certified mail of a Notice of Disallowance of the request for which the action relates.[61]

Because the IRS is only required to notify the person in possession of the property subject to levy of the levy, a third party often may not know of seizure or sales of the property in which it has an interest. Oftentimes, a third party may be foreclosed from recovering any amount from the IRS regardless of the merits or equities of the third party's position.

Wrongful Collection Actions

Under the original Taxpayers Bill of Rights, which became effective on November 10, 1988, an entirely new cause of action was created to protect taxpayers against collections officers who abused their authority.[62] The Act provided that a taxpayer may sue the United States if a collection employee "recklessly or intentionally" violates the Internal Revenue Code.[63] Mere negligent conduct, however, was not sufficient to justify a cause of action.

In 1998, Code Sec. 7433 was revised to allow suits for negligent violation of the Internal Revenue Code in the collection of tax.

Recent Developments

In early 2012, the IRS expanded its "Fresh Start" initiative to help taxpayers struggling to pay taxes during this recession. In addition to providing penalty relief and increasing the threshold on installment agreements, the Fresh Start changes increase the IRS Notice of Federal Tax Lien filing threshold from $5,000 to $10,000.[64] Notices of Federal Tax Liens may still be filed on amounts less than $10,000 when circumstances warrant, and the IRS will not retroactively apply the new $10,000 threshold and automatically withdraw a previously filed lien.[65]

The IRS may now issue a withdrawal of a filed Notice of Federal Tax Lien after the lien has been released.[66] To qualify, taxpayers must meet the following requirements:[67]

- Taxpayer's tax liability has been satisfied, and the lien has been released.
- Taxpayer is in compliance for the past three years of filing all individual and business returns and all information returns.
- Taxpayer is current on estimate tax payments and federal tax deposits, as applicable.

In addition, qualifying taxpayers who meet certain eligibility requirements may have their filed Notice of Federal Tax Lien withdrawn after entering into a Direct Debit installment agreement.[68] The taxpayer's request for lien withdrawal must be in writing and the taxpayer must meet the following requirements:[69]

- Qualifying taxpayers are:
  - individuals (Form 1040 tax);
  - business with income tax liability only; and
  - out of business entities with any type of tax debt.
- Eligibility requirements follow:
  - The current amount owed must be $25,000 or less.
  - If more than $25,000 is owed, the taxpayer may pay down the balance to $25,000 prior to requesting the lien withdrawal to be eligible.
  - The Direct Debit Installment Agreement must fully pay the amount owed within 60 months or before the Collection Statute expires, whichever is earlier.
  - Taxpayer must be in full compliance with other filing and payment requirements.

- Taxpayer must have made three consecutive direct debit payments.
- Taxpayer cannot have previously received a lien withdrawal for the same taxes unless the withdrawal was for an improper filing of the lien.
- Taxpayer cannot have defaulted on his or her current, or any previous, direct debit installment agreement.

Endnotes

1 Since at least 2008, each year, the Taxpayers Advocates Report to Congress has questioned whether the automatic lien filing does more damage than good as it seriously impairs a taxpayer's credit and the ability to get new financing. As of the 2013 report, TAS is still investigating the consequences. *See* discussion *infra*.

2 Most of these changes, however, applied only to relatively small dollar cases.

3 Although these liens were always available to the IRS personnel, until the past couple of years, Revenue officers rarely used these liens as collection tools and that is perhaps the reason they were not part of the Taxpayer's Bill of Rights II and the IRS Restructuring and Reform Act of 1998.

4 Code Sec. 6203.

5 Code Sec. 6303(a).

6 Code Sec. 6321

7 Code Secs. 6322, 6502.

8 Code Sec. 6321.

9 This means the date of assessment, not the date of the filing of the Notice of Federal Tax Lien.

10 *R. Aquilino*, SCt, 60-2 USTC ¶9538, 363 US 509, 80 SCt 1277; *see also T.A. Gardner*, CA-10, 94-2 USTC ¶50,482, 34 F3d 985. State laws that protect property from creditors do not apply to the federal tax lien. The state homestead exemption, for example, does not prevent the attachment of a federal tax lien. There are some exemptions under federal law, but these exemptions apply to levies, not to liens. *See* Code Sec. 6334.

11 *See* Michael I.Saltzman, Practice and Procedure, ¶14.07(1)(d) (2006).

12 *See* Code Sec. 6323.

13 Code Sec. 6323(b).

14 Code Sec. 6331(a).

15 Code Sec. 6331(d) (1), (2). This waiting period does not apply if the Secretary makes a finding that the collection of the tax is in jeopardy (jeopardy levy) or relates to employment taxes when the taxpayer is a "repeat offender." *See* Code Sec. 6331(d) (3) and Code Sec. 6330(h).

16 Code Sec. 6330(e).

17 Code Sec. 6332.

18 I.R.M. 5.17.14.1.1.

19 H.R. Rep. No. 356, 69th Cong. 1st Sess. (1926), 1939-1 (pt. 2) CB 361.

20 Examples of remedies at law are remedies under a corporate merger statute or bulk sales law. Although many states have codified fraudulent transfer rules, they are still known as equitable remedies having their original origins in the courts of equity.

21 *J.F. Stern*, SCt, 58-2 USTC ¶9594, 357 US 39, 42, 78 SCt 1047; *P.J. Bresson*, 111 TC 172, 179, Dec. 52,839, *aff'd*, CA-9, 2000-1 USTC ¶50,495, 213 F3d 1173.

22 *J.H. Leighton*, SCt, 3 USTC ¶1107, 289 US 506, 53 SCt 719 (1933).

23 Code Sec. 6902(a).

24 Code Sec. 6901(c). The liability of the fiduciary arises pursuant to 31 U.S.C.A. § 3713(b).

25 I.R.M. 5.12.1.2.12.

26 *Id.*

27 I.R.M. 5.12.2.6.8.4.

28 Text intentionally omitted.

29 I.R.M. 5.12.1.18.

30 As discussed *supra*, the IRS may not use Code Sec. 6901 against transferees with respect to taxes other than income, estate and gift taxes.

31 Title XXXVI of the Crime Control Act of 1990, P.L. 101-647, 104 Stat. 4789, 4933 (codified as amended in various sections of Title 28).

32 *See A. Summerlin*, SCt, 40-2 USTC ¶9633, 310 US 414, 415, 60 SCt 1019.

33 *R.J. LeBeau*, 63 TCM 3177, Dec. 48,305(M), TC Memo. 1992-359.

34 *S.T. Hagaman*, 100 TC 180, Dec.48,896 (1993).

35 I.R.M. 5.17.14.6.

36 I.R.M. 5.17.14.6.

37 I.R.M. 5.17.14.6.

38 *D.B. Reed*, DC-UT, 2001-2 USTC ¶50,602, 168 FSupp2d 1266.

39 *GM Leasing Corp.*, SCt, 77-1 USTC ¶9140, 429 US 338, 97 SCt 619; *see also C.E. Wolfe*, CA-9, 86-2 USTC ¶9655, 798 F2d 1241, 1243.

40 *Reed*, *supra* note 38.

41 I.R.M. 5.12.2.6.5.5

42 I.R.M. 5.12.2.6.5.4. *See also* I.R.M. 5.17.2.5.7.2(2) for other relevant facts.

43 28 U.S.C.A. § 2410.

44 In one case, the IRS erroneously seized assets from the taxpayer's girlfriend, and the appellate court found that she was not entitled to attorney's fees or damages even though the IRS had erred in its nominee determination. *See S.A. Lojeski v. Boandl*, CA-3, 86-2 USTC ¶9494, 788 F2d 196.

45 I.R.M. 5.17.2.5.7.1.

46 *See e.g. Limbaugh*, DC-Calif., 198 U.S. Dist. LEXIS 13157 (1998); *see also Wolfe, supra* note 39.

47 I.R.M. 5.17.2.5.7.1; *see also* Notice CC-2012-002 (Dec. 2, 2011).

48 Notice CC-2012-002.

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 I.R.M. 5.17.2.5.7.1.

54 *See S. Cohen*, DC-CA, 98-2 USTC ¶50,769 (1998); *see also Automotriz Del Golfo De California etc. v. Resnick*, 306 P2d 1 (Cal. 1957); *Sonora Diamond Corp. v. Superior Court*, 98 CalRptr2d 334 (Cal. Ct. App. 2000).

55 *See Towe Antique Ford Foundation*, CA-9, 93-2 USTC ¶50,430, 999 F2d 1387, *Misik v. D'Arco*, 130 CalRptr3d 123 (Cal. Ct. App. 2011).

56 Reg. § 301.6320-1(b)(2) Q&A B-5.

57 *Id.*

58 *See infra.*

59 I.R.M. 5.12.2.6.4.

60 Code Sec. 7426.

61 Code Sec. 6532(c)(2).

62 Code Sec. 7433 as added by P.L. 100-647.

63 Code Sec. 7433(a), as amended.

64 Internal Revenue Service, *Fresh Start Notice of Federal Tax Liens Increase in the Notice of the Federal Tax Lien filing threshold*, available online at *www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Fresh-Start-Notice-of-Federal-Tax-Liens* (last visited Nov. 30, 2012).

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*