

**FRADULENT CONVEYANCES, ALTER EGOS,  
NOMINEES AND OTHER IRS REMEDIES**

**©2013**

***By***

***ROBERT E. McKENZIE, EA, ATTORNEY***

***ARNSTEIN & LEHR LLP  
SUITE 1200  
120 SOUTH RIVERSIDE PLAZA  
Chicago, Illinois 60606  
(312) 876-7100  
REMCKENZIE@ARNSTEIN.COM  
<http://www.mckenzielaw.com/>***

# Fraudulent Conveyances, Alter Egos, Nominees and Other IRS Remedies

## Table of Contents

IRC § 3505 .....	1
In general.....	1
Loan of net payroll .....	1
FRAUDULENT CONVEYANCES .....	1
In general.....	1
STATUTORY TRANSFEREE LIABILITY .....	2
In general.....	2
Proposal of liability.....	2
Issue of state law.....	2
JUDICIAL TRANSFEREE LIABILITY .....	3
In general.....	3
Basis of suit .....	3
Types of fraud.....	3
FRAUD IN LAW OR IN EQUITY .....	3
In general.....	3
Evil motive .....	4
FRAUD IN FACT .....	4
In general.....	4
Badges of fraud .....	4
Inadequacy of Consideration.....	4
Insolvency of Transferor .....	5
Transfer of All or Nearly All of Debtor's Property .....	5
Close Relationship Between Parties to the Transfer.....	5
Transfer Made in Anticipation of a Tax or During Investigation of a Deficiency.....	5
Transaction Not in the Usual Course of Business.....	5
Reservation of Any Interest in the Property Transferred.....	6
Retention of Possession.....	6
Other factors .....	6
TIME OF CONVEYANCE .....	6
In general.....	6
NOMINEES .....	7
In general.....	7
Transferee and Nominee Cases .....	7
Process for filing nominee Hens.....	8
Alter ego .....	8
Wrongful Levy.....	8
Time to file .....	8
Erroneous seizure .....	9
Third-party recovery for wrongful seizures .....	9
Wrongful collection action.....	9
Negligence.....	10
FIDUCIARY LIABILITY .....	10
In general.....	10
Liability distinct from transferee liability .....	10
Knowledge of tax liability .....	11
Amount of liability .....	11
LIABILITY OF SURETIES .....	11
In general.....	11
<b>EXHIBITS.....</b>	<b>12-39</b>

# **Fraudulent Conveyances, Alter Egos, Nominees and Other IRS Remedies**

**By: Robert McKenzie ©2013**

## **IRC § 3505**

### **In general**

Lenders, sureties and others can potentially be held liable for trust fund taxes pursuant to IRC § 3505. A third party who pays wages directly for a company which does not also pay the withheld taxes plus interest for that company can be held liable for the taxes due on the payroll.' Section 3505(b) imposes liability upon a lender which lends net payroll not the gross amount due for the payroll which would include taxes and interest accrued thereon.<sup>80</sup> [IRC § 3505(b)] A lender cannot be held liable for more than 25% of funds lent to the employer.

### **Loan of net payroll**

The Supreme Court has upheld IRC § 3505." The Supreme Court ruled that a third-party lender who pays employees' wages is not entitled to notice and demand for the taxes due from a debtor before a civil suit is brought to collect withheld taxes that are not paid by an employer. If the employer fails to pay withheld income tax and the employee's share of the Social Security tax, the government is required, within 60 days of making an assessment of unpaid taxes against the employer, to provide the employer with the notice of the assessment and demand for payment. [1IRC § 6303(a)] There is no duty to serve the Section 6303(a) notice on the lender.

The Supreme Court held the bank was responsible for paying withholding taxes because it loaned net payroll and thus became liable under IRC § 3505 for a sum equal to the full amount of the unpaid withholding taxes. The Court reasoned that it would not be fundamentally unfair to require the government to provide the notice to delinquent employers but not to third-party lenders, since employers who are subject to summary collection procedures soon after unpaid employment taxes are assessed have a greater need for such notice than third-party lenders, upon whom liability can be imposed only after a civil suit. The Court further held that the risk of being liable for unpaid withholding is assumed by any lender who engages in net payroll financing, whereby the lender provides funds for payment of employees' net wages but insufficient funds for payment of withholding taxes.

## **FRAUDULENT CONVEYANCES**

### **In general**

Some taxpayers may attempt to avoid IRS collection measures by conveying their property to a third party or "encumbering" it with purported liens or mortgages. To forestall such actions, the IRS has both statutory and judicial remedies. Fraudulent conveyances are defined by the Internal Revenue Manual as follows:

A conveyance is deemed fraudulent when real or personal property is transferred with the object, intent, or result of such transfer being to place it beyond the reach of the transferor's creditors and which operates to prejudice the rights of such creditors. [IRM 57(16)0.8211

## **STATUTORY TRANSFEREE LIABILITY**

### **In general**

IRC § 6901 provides that the Service may assess and collect income, estate and gift taxes from the recipient of a transfer for less than adequate consideration. IRC § 6901 may not be used to assert liability for collected taxes or excise taxes unless the transfer was incident to a liquidation. Litigation is not required to obtain assessments under the provisions of IRC § 6901. Such liabilities may be assessed and collected in the same manner as the taxes that generated the transferee assessment. Thus, the liability of a transferee may be made the subject of a jeopardy assessment. The running of the statutory assessment period is suspended in the same manner as the original tax, and such liabilities, including accrued interest thereon, are subject to collection under administrative collection procedures.

### **Proposal of liability**

In transferee cases, the IRS proposes an assessment equal to the lesser of the value of the property received or the amount of taxes due against a transferee by merely sending the party a notice similar to an audit deficiency notice. The putative transferee has the same appeal rights concerning the proposed liability as a taxpayer confronted with an audit deficiency. In order to assert the liability, the IRS must meet the tests for fraud in fact or fraud in law. [See §§ 5:95 to 5:97 of this work]

### **Issue of state law**

IRC § 6901 provides a method of collecting the unpaid tax liability "at law or in equity" of a transferee of property. As a general rule, the liability of the transferee "at law and in equity" is a question of state, not federal, law." State law normally governs whether there is a transferee liability and the extent of liability, but this general principle is subject to certain qualifications. First, state law may not answer all questions relating to a transferee's liability, and second, where a question is not definitively answered by state law, federal law is consulted. Third, certain transferee liability issues are not controlled by state law because the supremacy of the federal government prevents the application of state law. For example, IRC § 6901(c) establishes a Statute of Limitations for the assertion of transferee liability. The Statute of Limitation applies to a claim by the Service, instead of the shorter state Statute of Limitations required of other creditors to proceed under the state's law. Finally, the government need not proceed under state law to assert statutory transferee liability in all situations.

**EXAMPLE 1** - If the Service wished to collect an estate and gift tax liability, it can proceed under Section 6324, which creates its own transferee liability, rather than state law. Similarly, where a fraudulent conveyance by a bankrupt taxpayer is at issue, the Bankruptcy Code would be applicable.

## **JUDICIAL TRANSFEREE LIABILITY**

### **In general**

With respect to tax liabilities for other than income, estate and gift taxes, the IRS must initiate a lawsuit against the alleged recipient. The IRS may also elect to litigate income, estate and gift taxes. The IRS may choose one of two types of suit.

- (1) A suit to set aside a fraudulent conveyance; or
- (2) A suit to establish transferee liability.

In the former suit, the government merely asks the court to set aside the conveyance and allow the IRS to proceed against the asset. In the latter suit, the IRS seeks a judgment against the recipient for the value of the property at the time of the alleged fraudulent transfer.

### **Basis of suit**

There is no specific federal statute providing for either type of fraudulent conveyance suit. Each suit is based on the law of the state in which the action is brought. Governing law is generally that of actual situs of the property. [C.J.S. page 852] The IRS will litigate its rights in the local United States District Court. 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."

### **Types of fraud**

In most jurisdictions, before a transaction may be attacked as fraudulent, prejudice to the rights of creditors must result therefrom. Two types of fraud in conveyance are recognized:

1. Fraud in Fact [see §§ 5:100 to 5:102 of this work]—where actual fraudulent intent to hinder and delay creditors exists.
2. Fraud in Law or in Equity [see §§ 5:98 to 5:99 of this work]—where the terms of any agreement or the nature of the transaction itself evidence a conclusive presumption in law that the conveyance is fraudulent.

If there is insufficient consideration for the debtor's transfer of property, even though there is no proof of intent to defraud, it is presumed "fraud in law," which is fraud that is presumed from the circumstances. Even if there is apparent sufficient consideration for the transfer, "fraud in fact" may be established if there was a specific intent to defraud creditors.

## **FRAUD IN LAW OR IN EQUITY**

### **In general**

Where the terms of any agreement or the nature of the transaction itself evidence a conclusive presumption in law then the conveyance is fraudulent. If there is insufficient consideration for the Debtor's transfer of property (which exists in any transfer to a beneficiary from an estate), even though there is no proof of intent to defraud, it is

presumed "fraud in law or in equity," which is fraud that is presumed from the circumstances. Even if there is apparent sufficient consideration for the transfer, "fraud in fact" may be established if there is a specific intent to defraud creditors.

Generally, the elements of fraud in law which constitute a fraudulent conveyance are: (a) a gift or sale for less than fair market value, (b) a then-existing or contemplated indebtedness against the transferor (i.e., accrual of a liability not assessment), and (c) a retention of insufficient property by the transferor to pay his indebtedness (insolvency). There is no need for the Service to establish an evil motive to assert fraud in law. The Service is not required to prove intent but merely the three elements. The transferee may in fact have been an innocent recipient, but if the elements exist, the IRS will prevail.

**EXAMPLE 1** - An example would be a father who transfers most of his assets to a trust for his children and is later audited and assessed with a large deficiency for taxes which had accrued prior to transfer. In such an instance the IRS could attack the trust because the transfer meets the three tests, even though the father had no intent to defraud the IRS.

### **Evil motive**

There is no need for the Service to establish an evil motive to assert fraud in law. The Service is not required to prove intent but merely the three elements. The transferee may, in fact, have been an innocent recipient via a bequest in a will, but if the three elements exist, the IRS will prevail. An example would be a father who transfers most of his assets to a trust for his children and is later audited and assessed' with a large deficiency for taxes which had accrued prior to transfer in such an instance, the IRS could attack the trust because the transfer meets the three tests, even though the father has no intent to defraud the IRS. Obviously, this could occur in many estate situations where the decedent had used aggressive estate planning techniques to avoid estate taxes.

In a case where husband and wife, after tax assessments had been made against them, gratuitously conveyed certain real estate to a trust company as trustee and named the wife the beneficial owner, after which the wife transferred her beneficial interest to their son, the transfer was held void and was set aside as against the United States!

## **FRAUD IN FACT**

### **In general**

The IRS must prove an actual intent to defraud when relying upon fraud in fact to set aside a conveyance. Courts will look for "badges of fraud" in making a determination with respect to fraud in fact. Although the badges may amount to little more than suspicious circumstances, they may be used by a court to infer a fraudulent conveyance.

### **Badges of fraud**

The following is a list of "badges of fraud" which have been used by various courts to infer a fraudulent conveyance. FIRM 56(16)0.831 et seq.

### **Inadequacy of Consideration**

This is one of the most important "badges" of fraud. It is generally accepted that a

person cannot give property away if it is to the detriment of creditors. If some consideration has changed hands, it may be necessary to determine whether the alleged inadequacy was due to an honest difference or dispute as to value, or if the consideration was a "cover" for a fraudulent conveyance. Although the possibility exists of proving that a conveyance was fraudulent even if consideration did change hands, the presence of adequate consideration is a strong defense.

### **Insolvency of Transferor**

- (1) It is important to show that the transferor was either insolvent or heavily indebted. Any transfer made in contemplation of insolvency is invalid in the same manner as if there were actual insolvency. Some authorities feel that a transfer without consideration is presumptive proof of fraud subject to rebuttal by evidence of honest intent or by evidence of solvency.
- (2) Insolvency need not always be proved to establish a fraudulent conveyance. It is usually sufficient to establish that the transfer did serve to hinder, delay, or defeat the payment of creditors. However, insolvency is a more important element of proof, if constructive rather than actual fraud is being proved.
- (3) Insolvency, for purposes of this Chapter, means that the transferor's liabilities exceed his or her assets.

### **Transfer of All or Nearly All of Debtor's Property**

In most cases this action would leave the transferor without any means of paying creditors and would be highly indicative of fraud. However, it must be determined whether this property was transferred in an attempt to pay the transferor's debts. If so, there may be no basis to invalidate the transfer without a showing that the government had legal priority over the creditor paid.

### **Close Relationship Between Parties to the Transfer**

The fact that the parties are related does not render the conveyance void per se. In jurisdictions where it would ordinarily be necessary to prove insolvency, if the transfer is between closely related parties the burden will be on the grantee to prove solvency. Moreover, the burden of dispelling the implication of fraud as against pre-existing creditors will be on the grantee if it can be proved that the grantor is insolvent after having made a voluntary conveyance to his or her spouse or child.

### **Transfer Made in Anticipation of a Tax or During Investigation of a Deficiency**

Generally, the law assumes that the transferor should be aware of the existence of his or her debts. Accordingly, the fact that the tax liability has accrued at the time of transfer is evidence of the debt; furthermore, it is not necessary for an assessment to have been made.

### **Transaction Not in the Usual Course of Business**

In attempting to void a transfer, it will be helpful to show that the transaction was not made in the usual course of business. Examples of this would be sales made outside of usual business hours; failure of creditor to surrender the evidence of indebtedness; transferor requesting cash prior to an inventory of the goods; failure to record an

instrument that would normally be recorded; the extension of credit for an unusually long period of time to a purchaser without security; and failure of the transferee to properly inventory goods transferred to him or her.

### **Reservation of Any Interest in the Property Transferred**

This would be inconsistent with a bona fide transfer. The same is true if the debtor continues to enjoy the use of the property transferred. It should also be determined whether there were any promises made by the transferee that could be of future benefit to the transferor.

### **Retention of Possession**

Relinquishment of possession is important to show a bona fide transfer. Retention of possession may lead creditors to extend additional credit based on the retained assets. Retention of personal property is more indicative of fraud than retention of real property since the document transferring real property can be recorded.

Other "Badges" or "Earmarks" That Are Self-Explanatory

- (1) Transaction surrounded by secrecy.
- (2) False or incorrect recital of consideration.
- (3) Failure of transferee to produce evidence to rebut an accusation of fraud.
- (4) False entries in books of transferor or transferee.
- (5) Unusual disposition of the consideration received for the property.
- (6) Assessment of the property for state tax purposes to transferor rather than transferee.

### **Other factors**

In addition to the particular badges of fraud set out above, various other circumstances, singly or collectively, may constitute badges of fraud, such as the concealment of an alteration in the attestation laws of the conveyance; the transferee's failure to keep a record of the dates and amounts of the loans or advances made by him to the transferor; failure to demand repayment; misdescription or insufficient description of the property transferred; sending the money received from the transfer out of the country; assignment of the property to the seller rather than the purchaser; and the fact that the purchaser, soon after the transfer, offered to resell the property at a much higher price.

## **TIME OF CONVEYANCE**

### **In general**

In order for the IRS to pursue either a judicial or administrative transferee based on fraud in law, the conveyance must have occurred subsequent to the accrual of a tax liability. 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 fraud in fact.

## **NOMINEES**

### **In general**

With respect to transactions where property is transferred to a third party merely to hold for the benefit of the transferor, the IRS position, as stated in the Internal Revenue Manual [IRM 5.12.1.18] is:

### **Transferee and Nominee Cases**

- (1) A transferee Notice of Federal Tax Lien (NFTL) may be used to subject property to the government's Federal Tax Lien (FTL) when property has been transferred or acquired in the name of a third party with the taxpayer's funds. Some state laws may not recognize transferee NFTL without the judicial process or it may not be possible to show that the taxpayer acquired the property.
- (2) If the transferee NFTL is not possible, but facts show that the taxpayer treats the property as his or her own, a nominee NFTL may be filed. District Counsel will advise which type of NFTL to file. Consider the following circumstances in developing your case:
  - a) the taxpayer is paying maintenance expenses,
  - b) using the property as collateral for loans,
  - c) paying state and local taxes on the property.
- (3) You may not file a nominee or transferee NFTL without the written approval of District Counsel.
  - a) Cases should be developed to withstand court challenge.
  - b) Focus on the conveyance of the title.
  - c) Requests should be for advice as to the need for a supplemental assessment, a new notice and demand and the language to be incorporated in the NFTL or levy.
  - d) Prepare a report containing all of the facts of the case to accompany the request.
- (4) Subsequent enforcement action is at the district's discretion once District Counsel has approved application of the nominee or transferee theory in a case.
- (5) In determining what additional enforcement action should be taken, consideration much given to the confusion in the chain of title and redemption rights by the taxpayer. These circumstances may depress the sale of the property.
- (6) A judicial lien foreclosure or seizure followed by suit to foreclose the NFTL will generally bring a greater sale price particularly for real property.

- (7) The administrative seizure and sale process may be used if prompt action is needed to protect the government's interest. If there is any doubt, request an opinion from District Counsel.

### **Process for filing nominee liens**

The IRS Manual provides procedures for the filing of nominee liens without the requirement of a court order. The Collection Division must secure the prior approval of District Counsel. Subsequent to the approval of District Counsel, the IRS files a lien against the putative nominee. The IRS may also proceed to seize assets held by an alleged nominee. He or she is then forced to bring a quiet title action for his or her property if the IRS refuses to administratively release the lien. [28 U.S.C.A. § 2410] If you believe that property is not held by a nominee, force the IRS to carry its burden of proving that property is not held by a nominee by bringing a quiet title action. The IRS has abused the nominee lien on many occasions and prior to the enactment of the Taxpayer Bill of Rights, effective November 10, 1988, could do so without fear of judicial sanctions. In one case the IRS erroneously seized assets from the taxpayer's girlfriend, and the Appellate Court found that she was not entitled to attorneys' fees or damages even though the IRS had erred in its nominee determination."

### **Alter ego**

The Internal Revenue Service might also file a lien alleging that one entity was the alter ego of the other. This can occur in cases when the taxpayer fails to follow corporate formalities with her corporation. For example, if the taxpayer pays personal expenses with corporation assets, she might be found to be the alter ego of the corporation, or visa versa.

### **Wrongful Levy**

If the Internal Revenue Service has wrongfully levied on the property of a third person (not the taxpayer), the Code allows for an injunction to prohibit the enforcement of such 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. [IRC § 7426] Such a suit must be brought within nine months from the date of the levy, except in the case where the owner makes a timely written request for the return of the property pursuant to IRC § 6532(c). If a request is made, the period is extended for a period of 12 months from the filing of the request or six months from the date the IRS rejects the request, whichever is earlier. Entitled to relief under Section 7426 is any person (other than the taxpayer against whom the taxes are assessed) who claims an interest in or lien on such property superior to that of the Government.

### **Time to file**

An action to contest a levy or to recover any proceeds from the sale of property must be filed within nine months after the date of levy, or in the case of an action to recover substitute sale proceeds the date of agreement giving rise to the action. The short period of limitations is strictly enforced, see *United Sand and Gravel Contractors, Inc. v. United States*. The Service is under no duty to notify any persons of a levy other than a person in possession of the property subject to levy and the taxpayer. As a consequence, a third party who does not know of seizure or sale of the property in

which it has an interest will be foreclosed from recovering any amount from the IRS regardless of the merits or equities of the third party's position. The nine-month period of limitations is extended when a person claiming that the Service has wrongfully levied upon property timely files a written request for the Service to return the property. [IRC § 6343(b)] The filing of such an administrative request extends the nine-month period of limitations for an additional period that is the shorter of twelve months from the date of filing the request, or six months from the date of mailing by registered or certified mail of a Notice of Disallowance of the request for which the action relates. [IRC § 6532(c)(2)] For the administrative request to extend the period of limitations for bringing suit, it must have been made within the nine-month period.

### **Erroneous seizure**

The Internal Revenue Service has occasionally erroneously seized property belonging to others because its employees have failed to accurately check public records to determine legal ownership of the property. Clients of the author have been forced to initiate litigation to prevent sale of their assets to pay liabilities of another taxpayer. The mere threat of such a suit is sufficient, in many instances, to convince the Internal Revenue Service to release an erroneous seizure without the necessity of actually initiating suit. This action is also appropriate if the complaining party holds a partial interest with the taxpayer, i.e. a joint tenant or security interest holder.

### **Third-party recovery for wrongful seizures**

Under prior law, a party other than the taxpayer could only bring a wrongful levy action pursuant to IRC § 7426(b) which did not provide the same statutory damages and relief as Section 7433. Therefore, the third-party who had his property wrongfully seized by the Internal Revenue Service had fewer remedies available than the taxpayer who was subject to reckless or intentional disregard of the Internal Revenue Code by an IRS employee. Under the 1998 Act, if in any third-party action against the IRS for wrongful levy there is a finding that any officer or employee of the IRS recklessly or intentionally or by reason of negligence disregarded any provision of the Internal Revenue Code, the IRS can be held liable for an amount equal to the lesser of one million dollars (\$100,000 in the case of negligence) or the sum of money due under IRC § 7426(h). A third party may receive actual, direct economic damages sustained as a proximate result of reckless, or intentional or negligent disregard of any provision of the IRC by an IRS officer, reduced by any amount of damages which would be awarded by IRC § 7426(b), IRC § 7426(h)(1)(A) and the cost of the action. The new action must be brought within two years of the occurrence as opposed to the nine months required by the IRC § 7426. Therefore, a third-party who has failed to bring a third-party action pursuant to IRC § 7426 may still have a cause of action pursuant to IRC § 7433. The third-party must also have exhausted administrative remedies to qualify for damages. [Act § 3102(b); IRC § 7426(h); IRC § 7433(d)]

### **Wrongful collection action**

The TBR1, effective November 10, 1988, created an entirely new cause of action against collection officers who abuse their authority. [IRC § 7433] The Act provides that a taxpayer may sue the United States if a collection employee "recklessly or intentionally" violates the Internal Revenue Code. [IRC § 7433(a)] Mere negligent

conduct under that Act, however, was not sufficient to justify a cause of action.

**EXAMPLE 1** - A Revenue Officer seizes the assets of the taxpayer's girlfriend to pay his taxes. The seizure is made without justification based upon the belief of the Revenue Officer that the girlfriend holds the property as a nominee of the taxpayer. The Revenue Officer is guilty of reckless conduct in seizing the girlfriend's assets.

**EXAMPLE 2** - A Revenue Officer seizes the personal residence of the taxpayer without prior approval of the Area Director as required by the Code; [IRC § 6334(e)] The Revenue Officer may be guilty of reckless conduct in failing to obtain the Area Director's approval for seizure of the personal residence.

**EXAMPLE 3** - A Revenue Officer seizes a business premises without the prior consent of the owner or a writ of entry issued by a Federal court. The Revenue Officer may be guilty of reckless conduct for failing to follow proper procedures in seizing taxpayer's business premises.

### **Negligence**

The 1998 Act revised IRC § 7433 to allow suits for negligent violation of the Internal Revenue Code in the collection of tax. Prior to this amendment, it had been very difficult for taxpayers to prove that an IRS employee had intentionally or recklessly disregarded the Code.

## **FIDUCIARY LIABILITY**

### **In general**

The Internal Revenue Service has the right to personally pursue trustees, executors and other fiduciaries who fail to pay taxes due from a trust or estate. [31 U.S.C.A. § 3713] The IRS may pursue such fiduciaries administratively if the unpaid liability is for income, estate or gift taxes. [IRC § 6901] The Internal Revenue Code broadly defines fiduciary as follows:

Fiduciary—The term 'fiduciary' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person. [IRC §7701(a)(6)]

Included within the class of fiduciaries who may be liable are not only executors and personal representatives of a debtor but also court-appointed agents such as liquidating receivers or distributing agents. All of these, if in fact given possession and control of the debtor's assets, are charged with the payment of the debtor's obligations, and if there is sufficient notice of the government's claim, they are bound in distributing the assets of any insolvent."

### **Liability distinct from transferee liability**

Fiduciary liability is entirely distinct from transferee liability, although Section 6901 provides summary assessment and collection procedure against both the transferee and the fiduciary. In general, the liability of a fiduciary arises from the fiduciary's payment on behalf of an estate of debts that do not have priority over the debts to the

United States. On the other hand, transferee liability is asserted where the transferee takes property of the transferor, without full, fair and adequate consideration to the prejudice of the United States as a creditor. Both an estate and the executor or the administrator of the estate in his representative capacity can be liable as transferees of the assets of the deceased under Section 6901." In *Ewart v. Commissioner*," the co-executor who received the property from the estate was held liable as transferee under Ohio law because transfer rendered the estate insolvent. The estate and its executors are relieved only where notice of transferee liability has not been received before the assets have been distributed and the executor or administrator dismissed under local law. The executor may apply for release from personal liability by written application and payment of the amount of tax determined under.

### **Knowledge of tax liability**

A fiduciary can only be held liable if he or she has knowledge of the tax liability. Actual knowledge is not a requirement, however, and a fiduciary who had information available which would have put a reasonable person on notice of an obligation to the United States to be held liable.

### **Amount of liability**

A fiduciary may be held liable even though she did not receive any benefit from the estate that she was administering. Liability is limited to the extent of the payments of debts which were preferred over those of the United States, or to the amount of taxes remaining due the United States, whichever is lesser.

## **LIABILITY OF SURETIES**

### **In general**

By statute, performance bonds must guarantee payment of federal payroll taxes if they are entered into pursuant to invitations to bid after June 30, 1967. [40 U.S.C.A. § 270a(d)] In order to impose this liability the Internal Revenue Service must initiate a civil suit to enforce the obligations under the performance bond. The statute for commencing the suit is one year after notice of the unpaid tax liability is given to the surety. Normally, prior to initiating such a lawsuit, the IRS will send a demand letter to the bonding company. If you are representing a potentially responsible person, you might consider alerting the Internal Revenue Service to this statute so that the monies may be collected from a third party. Even though the bonding company may later sue your client, an obligation to a bonding company is dischargeable, and the Trust Fund Recovery Penalty is not dischargeable, in bankruptcy. Therefore, your client might be able to avoid the obligation after the bonding company had paid the trust fund obligation of the defunct company.

# **EXHIBITS**

**Part 4. Examining Process**  
**Chapter 11. Examining Officers Guide (EOG)**  
**Section 52. Transferee Liability Cases**

**4.11.52 Transferee Liability Cases**

- 4.11.52.1 References
- 4.11.52.2 Overview
- 4.11.52.3 Types of Transferee Liability
- 4.11.52.4 Assessment Statute of Limitations (SOL)
- 4.11.52.5 Burden of Proof
- 4.11.52.6 Administration Procedures
- Exhibit 4.11.52-1 ASSETS TRANSFERRED
- Exhibit 4.11.52-2 Analysis of Transferor's Liability
- Exhibit 4.11.52-3 Example of A Transferee Report

**4.11.52.1 (11-01-2004)**

**References**

1. References for Transferee Liability Cases.

IRM 4.4.17.4 - Transferor / Transferee Assessments  
IRM 25.6.22.6.16.1 - Statute of Limitations - Transferees  
IRM 5.17.14.3 - Transferee and Fiduciary Liability  
IRM 4.8.8.14 - Quality Measurement - Transferee Liability  
IRM 4.14.1 - Statutory Notice of Deficiency, Transferor - Transferee Liability Cases  
Rules Of Practice And Procedure Of The United States Tax Court - Rule 142 as to burden of proof in transferee cases  
IRC 6901 - Transferred Assets  
IRC 6902 - Provisions of Special Application to Transferees

**Caution:**

The following discussion concerning Transferee Liability Cases is only meant to provide an overview and to provide examiners with information which will enable them to recognize actual or potential transferee assessment situations. As with other areas of the tax law, transferee liability cases can be very complex in nature. This discussion cannot and should not replace independent research predicated upon the facts of the specific case. Examiners are encouraged to contact the local Area Transferee Liability Coordinator (listing at <http://sbse.web.irs.gov/CF/TechServProgAssign.asp> – search on "transferee" or Area Counsel for additional guidance if presented with a potential transferor-transferee situation.

**4.11.52.2 (11-01-2004)**

**Overview**

1. "Transferee liability" is a tool used by the IRS to collect a transferor taxpayer's tax liability. IRC Section 6901 governs transferee assessments.
2. A transferee case is developed to collect the liability from the person/entity who received the taxpayer-transferor's assets for less than full, fair and adequate consideration or to collect the liability from the person/entity who is legally responsible for paying the taxpayer-transferor's liability. This person/entity is the "transferee". The person/entity whose tax liability the government is seeking to collect is the "transferor".
3. Examiners are required to consider collectibility in every examination. As such, they must be able to identify situations in which the taxpayer has intentionally or inadvertently placed assets out of the legal reach of the IRS. Additionally, they must be able to identify situations in which asset

transfers may not be conducted in a "normal business manner" (not at arm's length) because of the close relationship of the parties involved.

4. For example:

- A. During the initial interview the examiner is told the corporate taxpayer dissolved during the preceding year. The examiner should follow-up with questions concerning the disposition of the corporate assets to determine if a transferee assessment situation exists. The examiner should initiate a transferee liability case if the transferor corporation has an unpaid tax liability and the transferee criteria have been met. See the Burden of Proof discussion at IRM 4.11.52.5.
  - B. A distribution by a corporation upon its dissolution to a shareholder based on the shareholder's equity interest in a corporation, such as a dividend, or a payment by the corporation of a debt owed to a shareholder, can be a preferential transfer to an insider, thus, resulting in transferee liability.
  - C. If a stockholder is also an officer or an employee of the corporation, and receives a bonus or salary which is unreasonable, the stockholder may be treated as a transferee on the theory that the excessive salary is the equivalent of a distribution of corporate assets.
  - D. Transferee liability may arise in a stock sale context, where the sale is in economic substance a "sham".
  - E. The purchase of the stock of a corporation, followed by the subsequent liquidation of the corporation, may render the purchaser liable as a transferee.
5. Transferee cases are also identified during the collection process. Revenue Officers refer potential transferee cases to Examination personnel via Form 3031, Report of Investigation of Transferee Liability.
6. Income, Estate, Gift and certain other taxes can be collected through a transferee liability case. "Other taxes" are defined as any other tax (employment, excise, withholding), but only if such liability arises as the result of a liquidation of a corporation, partnership or a reorganization within the meaning of IRC Section 368(a).

#### **4.11.52.3 (11-01-2004)**

##### **Types of Transferee Liability**

1. There are two types of transferee liability, both of which can be asserted under IRC Section 6901. The two types of transferee liability are "transferee at law" and "transferee in equity" .

#### **4.11.52.3.1 (11-01-2004)**

##### **Transferee At Law**

1. Transferee at law arises when a person/entity is responsible for the transferor's tax liability because of a contractual agreement with the transferor. In this situation, a valid contract must exist and the government must prove that the tax liability was within the
2. terms of the contract (i.e., an assumption or guarantee agreement). Statutory mergers where the surviving corporation is primarily liable for the debts of the merged corporation do NOT result in a transferee situation. Consult the contracts and agreement affecting the merger and applicable state law.
3. Transferee at law may also arise under state statutes other than the fraudulent conveyance statutes. For example, statutes relating to corporate mergers and consolidations, bulk sales of assets, liability of officers, directors and shareholders of certain types of distributions and transactions may create a transferee at law. Similarly, transferee at law may arise under federal statute, such as the liability of representatives of persons/estates who pay other debts before paying federal tax debts (31 USC 3713(b)).

#### **4.11.52.3.2 (11-01-2004)**

##### **Transferee In Equity**

1. Transferee in equity is the most common form of transferee liability. This situation arises when a person/entity receives the transferor's assets for less than full, fair and adequate consideration, leaving the transferor insolvent and unable to pay the tax liability.
2. Transferee in equity cases are based on the state or federal fraudulent conveyance statutes. In these cases, the transferee liability is limited to the value of the assets received from the transferor.

#### **4.11.52.4 (11-01-2004)**

##### **Assessment Statute of Limitations (SOL)**

1. Examiners must properly determine and control the transferee statute of limitations (SOL), since there is no record of the transferee SOL on Masterfile. A transferee assessment SOL is based upon the transferor's SOL and therefore, an account transcript for the transferor should be obtained immediately. The SOL for the transferee is as follows:
  - A. The initial transferee - one year after the expiration of the period of limitation for assessment against the transferor.
  - B. A transferee of a transferee - one year after the expiration of the period of limitation for assessment against the preceding transferee or 3 years after the expiration of the period of limitation for assessment against the transferor, whichever expires first; except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the return of execution in the court proceeding.
  - C. A fiduciary - not later than one year after the liability arises or not later than the expiration of the period for collection of such tax, whichever is later.
2. In the case of a fraudulent return, tax may be assessed at any time. Thus, if fraud is established on the part of the transferor, an assessment may be made against the transferor at any time.
3. If the transferor's tax may be assessed at any time because of fraud, the period of limitations against a transferee remains open indefinitely. (Bartner Automatic Self Ser. Laundry Inc. v. Commissioner, 35 T.C. 317 (1960); Forehand v. Commissioner, T. C. Memo 1993-618; Harvey M. Pert v. Commissioner, 105 T.C. 370 (1995). ) IRC 6501(c) holds the statute open.
4. However, DO NOT allow the normal transferee four-year period of limitations to expire if at all possible. Instead, obtain a consent agreement from the transferee (as discussed below). In the event the fraud issue is not sustained, the transferee statute will be open because a transferee consent was obtained and the IRS can still pursue the tax and alternative (to fraud) penalty liabilities against the transferee.

#### **4.11.52.4.1 (11-01-2004)**

##### **Consent To Extend The Transferee's SOL**

1. Note: CASES SHOULD BE COMPLETED WITHIN THE NORMAL TRANSFEREE SOL TO THE EXTENT POSSIBLE. CONSENTS TO EXTEND THE TRANSFEREE SOL SHOULD BE SECURED ONLY IN LIMITED CIRCUMSTANCES. APPROVAL OF THE CONSENT AGREEMENT SHOULD BE OBTAINED FROM AREA COUNSEL BEFORE THE CONSENT AGREEMENT IS EXECUTED BY THE DELEGATED OFFICIAL.

2. The following forms can be used to extend a transferee SOL:
  - A. Form 977 - Used to extend the transferee assessment period for income, gift, and estate tax.
  - B. Form 4016 - Used to extend the transferee assessment period for employment and excise tax.
3. Again, please note that a merger or consolidation, where the successor corporation is primarily liable for the debts of the merged corporation, does NOT result in a transferee situation. Therefore, a merger or consolidation does not provide the extra one year period on the SOL that applies in transferee situations. In situations involving a dissolved corporation, the corporate officer's ability to represent the dissolved corporation (transferor) and execute consents/waivers on behalf of the dissolved corporation-transferor is dependent on the law of the state where the corporation was organized. Thus, the corporate officer may be unable to legally execute a consent agreement or waiver of the restriction on assessment, depending on the applicable state law. In these situations, Area Counsel should be consulted for advice and guidance.

**4.11.52.5 (11-01-2004)**  
**Burden of Proof**

1. The government has the burden of proving all elements necessary to establish a transferee liability. Documentation must be contained in the case file to support each requirement, since many transferee cases go to court. If the required documentation is not contained in the case file, the government will not likely be sustained.
2. All transferee cases, whether at law or in equity, require documentation showing that the transferor transferred assets to the transferee. The documentation should detail the dates of transfer, what assets were transferred, the value of each individual asset, and any liabilities assumed by the transferee. Exhibit 4.11.52-1 is a sample worksheet for summarizing assets transferred.

**4.11.52.5.1 (11-01-2004)**  
**Documentation Required For Transferee At Law**

1. For transferee at law cases, the file must contain documentation showing that the transferee assumed the tax liability because of either a contractual agreement or a state or federal statute.
2. For transferee at law established by a contractual agreement, the examiner must show that a valid contract exists and that under the contract, the transferee assumed the transferor's tax liability. The case file should include a copy of the contract.
3. For transferee at law established by statute, the case file should include a copy of the applicable state or federal statute on which the IRS is relying.
4. In addition, the case file should include a transcript of the transferor's account to establish that the transferor's tax liability was for a tax period ending prior to the transfer. If the transfer of property to the transferee was made during the tax period under consideration, consult Area Counsel as to whether or not the tax liability of the transferor had accrued on the date of the transfer.

**4.11.52.5.2 (11-01-2004)**  
**Documentation For Transferee In Equity**

1. There are five required elements to show a transferee in equity.
2. First, the government must prove that the transferor became insolvent when the asset transfer occurred, or was rendered insolvent because of a series of asset transfers. Documentation

should show that the sum of the transferor's tax and other liabilities (i.e., mortgages, debts payable, etc.) exceeded the transferor's assets at the time of the transfer. For example, a copy of the transferor's balance sheet at the time of insolvency, bankruptcy documents, corporate dissolution documents, documents showing how the assets in a decedent's estate were distributed, etc., should be obtained and included in the case file.

Note:

In some states, depending on state law, insolvency may not be necessary for a transferee in equity proceeding. Consult Area Counsel if there in transferor-transferee situations when the transferor was not insolvent at the date of or rendered insolvent by the transfer of property.

3. Second, the government must prove that the asset transfer was for less than adequate or full consideration. Documentation must show:
  - A. The asset was transferred (i.e., deed, balance sheets, canceled check(s), title transfers, etc.).
  - B. The value of the asset transferred on the transfer date.
  - C. The consideration, if any, paid for the asset(s). Who received the asset(s). The documentation must show the current legal title.

Note:

Again, Exhibit 4.11.52-1 may be used to summarize the above information.

4. A transferee is rarely a joint entity. For example, if a corporation made one check payable to the shareholder husband and one check to the shareholder wife, there would be two separate transferee cases - one for the husband, and one for the wife. One transferee case in the joint names would not exist since the checks were not made out in joint names. If, however, land was transferred to husband and wife jointly (i.e., joint ownership such as tenancy by the entireties) there would be only one transferee - the husband and wife as joint tenants.
5. Third, the government must prove that the asset transfer was made after the liability for the taxes accrued. Documentation must be included to show the date the tax liability accrued and the date the transfer occurred. The tax accrues by the last day of the tax period, not on the due date of the return. There is no requirement that the tax liability has been assessed at the time of the asset transfer in order to proceed against the transferee.

Note:

Different courts have reached various conclusions as to when the tax liability of the transferor accrues, so Area Counsel should be consulted when determining on what date the liability of the transferor for the tax debt accrued.

6. Fourth, the government must show that the transferor was liable for the tax. Documentation must be included to show the tax liability. If the tax has been assessed, a transcript of the transferor's account should be included. If the liability is the result of an examination, a copy of the examination report or notice of deficiency should be included, although transferee assessments can be made without having issued an examination report or notice of deficiency to the transferor.
7. Fifth, the government must prove that a reasonable attempt was made to collect the tax liability from the transferor or that it would be futile to pursue collection from the transferor such as in the case of a corporation which has dissolved and distributed its assets. Documentation should show that the transferor is in bankruptcy, has dissolved, or has distributed all the assets and collection from the transferor is not possible or that collection activity was unsuccessful. A TXMOD will show the action taken by Collection.

#### **4.11.52.6 (11-01-2004)**

## **Administration Procedures**

1. The first order of business for a transferee liability case is to determine the transferee SOL, as discussed earlier, and document the case file. Complete Form 895, Notice of Statute Expiration, if the transferee assessment statute expiration date is within 210 days.
2. If the transferee liability case is not already on ERCS, the examiner should control each transferee on Non-Masterfile (NMF) AIMS, using the MFT code and activity code of the transferor return. This should be separate from the regular tax examination for the transferee individual/entity.
3. ERCS will not allow both a Masterfile and a Non-Masterfile control for the same person/entity. In addition, AIMS will not allow an SSN with a BMF MFT code. Therefore, a dummy file must be established for the transferee case. It should use the transferee's TIN with a "-D" (dummy) and "Transferee" after the name to indicate transferee status. Using the "-D" eliminates the other dashes in the TIN, so both ERCS and AIMS will accept the number with the NMF MFT of the transferor (Example: Smith, John, Transferee, 123456789-D, MFT 80, or Big Trucks, Transferee 123456789-D, MFT 80). Each transferee is controlled separately.
4. The examiner should then schedule an appointment to interview the transferor and to obtain documentation to support the burden of proof, as discussed above. The transferee, as well as other individuals associated with the transfer, can also be contacted to obtain information necessary to support the burden of proof.

## **Sample Transferor Questions**

1. Transferor's financial history - when and how did the transferor become insolvent? When did they file bankruptcy? Was there a dissolution?
2. What are the most current financial statements prior to becoming insolvent? Ask for copies. If there are no financial statements, ask the transferor to reconstruct financial statements and attach any documentation he relied on.
3. What assets did you have prior to insolvency and how were they disposed of? What consideration was paid? Obtain copies of any sales agreements. What was the FMV at the time of the transfer? How was this FMV determined? Was there any debt associated with the asset?
4. List all bank accounts and brokerage accounts prior to insolvency. Did you take out any loans within 3 years of your insolvency? With whom?
5. When did you become aware of your income tax liability?

## **Corporate Transferor**

6. Prior to insolvency, did the corporation have any outstanding loans to shareholders? To whom? Were they repaid? When?
7. What salaries and bonuses were paid to the corporate officers in the last three years?
8. What dividends were paid in the last three years? How much? To whom?

## **DECEDENT - Interview the Personal Representative**

9. Who is the personal representative? Obtain documentation.
10. Obtain a copy of the will.

11. Have the assets been distributed yet? To whom?
12. Did you have knowledge of the tax liability of the decedent?
13. Has the estate been closed?
14. Was the IRS notified of the transferor's death? Was a proof of claim filed by the IRS?
15. Did you file the decedent's final return?

**DIVORCE** - The examiner needs to determine if the divorce was fraudulent or was it a bona fide divorce.

16. What is the current address of the taxpayers?
17. When did the spouse receive the assets?
18. Who negotiated and drafted the divorce decree? Obtain a copy.
19. Were both spouses represented by Counsel? Did they know of the transfer of the assets?
20. Did the spouse receiving the assets have knowledge of the other spouse's unpaid tax liability?

### **SAMPLE TRANSFEREE QUESTIONS**

#### **GENERAL QUESTIONS**

1. When did you become aware of (transferor) \_\_\_ unpaid tax liability?
2. Are you in any way related to \_\_\_(transferor)\_\_\_?

#### **QUESTIONS FOR TRANSFEREE IN EQUITY**

3. What assets did you receive from \_\_\_\_ (transferor)?
4. What consideration did you pay for the asset(s)?
5. Whose name is the asset titled? Was title legally transferred?
6. Why did \_\_\_\_ (transferor) give the asset to you for little or no consideration?
7. Are you aware of any other assets of \_\_\_\_ (transferor) that were transferred to others? To whom? What was transferred and what was paid?
8. When did \_\_\_\_ (transferor) become insolvent (liabilities exceeding assets) and/or when did \_\_\_\_ (transferor) stop doing business?

#### **QUESTIONS FOR TRANSFEREE AT LAW**

9. Was a fiduciary or personal representative involved in distributing the assets? Who? What was his/her capacity, i.e., personal representative, trustee, receiver in bankruptcy? Ask for documentation appointing him/her to this position.
10. Are there any contracts which you entered into in which you agreed to assume \_\_\_ (transferor's) liability?

After all information/documentation is secured, the examiner should solicit an agreement and payment from the transferee. If there is more than one transferee, the transferor's liability is not allocated between the transferees. Each transferee is assessed the full amount of the transferor's liability to the extent of the

fair market value (FMV) of the assets received. The most common forms used include:

- Form 870, Waiver of Restrictions on Assessment and Collection (for income tax)
- Form 2504, Agreement to Assessment and Collection (for employment tax)
- Form 2045, Transferee Agreement See the Forms discussion later in this section at 4.11.52.6.2.

#### **4.11.52.6.1 (11-01-2004)**

##### **Transferee Case File**

1. Each transferee is a separate entity. As such, each transferee should have a separate case file established. The transferee individual/entity will have the title "Transferee" after the transferee's name.
2. Transferee liability cases that originate in Collection should have a transferee report prepared on Form 3031. Transferee liability cases that originate in Examination should have a transferee report that includes the same information as Form 3031 but in memorandum format. See the forms discussion at 4.11.52.6.2.
3. The case file documentation and workpapers should be attached to the transferee report. As with regular examination files, the workpapers should be properly numbered and indexed.
4. The transferor's original tax return(s) should be included for those tax periods for which a liability is unpaid.
5. Area Counsel reviews all transferee statutory notices of deficiency (90-day letters).
6. Close agreed case to Case Processing Support for assessment. The Form 3210, Document Transmittal, should be annotated "Agreed Transferee Case".
7. For unagreed cases, the 30-day letter is issued at the group level, using Letter 955, modified as necessary. If the case is not protested to the Office of Appeals, the unagreed case file is forwarded through Case Processing to Technical Services, for preparation and issuance of the Transferee Notice of Deficiency. Form 3210, Document Transmittal, should be noted "Unagreed Transferee Case - Issue SNOD".

#### **4.11.52.6.2 (11-01-2004)**

##### **Forms**

1. Form 870, Waiver of Restriction on Assessment and Collection (for income tax), Form 890, Waiver of Restriction on Assessment and Collection of Deficiency and Acceptance of Overassessment – Estate, Gift and Generation–Skipping Transfer Tax (for estate and gift taxes) and Form 2504, Agreement to Assessment and Collection (for employment and excise taxes) can be used to secure agreement to the transferee assessment.
2. Add the following wording to Form 870, Form 890 or Form 2504:
  - A. If the assets transferred exceed the transferor's total liability - "This represents the undersigned's liability as transferee of the assets of (name and address of the transferor) for (type of tax), penalties, and interest thereon as provided by law due from said transferor."
  - B. If the transferor's total liability exceeds the assets transferred - "This, plus interest thereon, represents the undersigned's liability as a transferee of the assets of (name and address of the transferor) for (type of tax), penalties and interest thereon, to the extent of the net value of the assets received from the transferor, plus interest thereon as provided by law. It has been determined that the net value of the assets received is (value of the assets received)."

#### **4.11.52.6.2.1 (11-01-2004)**

##### **Form 2045, Transferee Agreement**

1. This form is used only if the transferor is a corporation. By signing this form, the transferee admits liability as transferee of the assets received from the transferor, assumes and agrees to pay the tax liability of the transferor. Thus, by signing this form, the transferee has relieved the government of the burden of proving transferee liability.
2. It should be noted that this form provides the transferee with the opportunity to agree to the status as a transferee only. The form does not obligate the transferee to a specific amount of tax liability - that is reserved for Forms 870, 890 and 2504. In other words, a transferee may agree that he is a transferee, but may disagree with the amount of liability that must be assumed/paid.
3. To protect the government's interest, the examiner should solicit Form 2045 from each transferee receiving property from a corporate transferor. Although not the best approach, Form 2045 can be obtained from only one transferee provided that the assets received by that transferee are sufficient in amount to cover the transferor's total liability. A copy of the minutes of the board of directors authorizing the corporate officer (of a corporate transferee) to enter into this agreement should be attached to the Form 2045.
4. A clear explanation to the transferee as to the effect of executing the agreement should be attached to the Form 2045.

#### **4.11.52.6.2.2 (11-01-2004)**

##### **Form 3031 Or Equivalent Memorandum**

1. This report/memorandum will list the name, address, and TIN of the transferee and the transferor. It must also contain the following:
  - A. A list of all of the transferor's tax periods and their respective unpaid tax liabilities and penalties.
  - B. How the transferor's unpaid tax liability was determined (i.e., from originally filed tax return, from an income tax examination, etc.). Whether the transferee is a transferee at law or in equity or both.
  - C. A complete background and reasons for recommending the transferee action, with reference to the documentation used to determine who the transferee is.
  - D. A list of all of the burdens of proof for transferee at law or in equity and how they have been met. Reference the page/index number of the documentation that supports each burden of proof.
  - E. An analysis of all of the transferor's assets and their disposition. Usually, the transferor will need to be questioned as to the asset disposition and documentation will need to be requested to support this. The memorandum will list the specific amounts that were transferred to each transferee. It should include a description of each asset, its value on the transfer date, and the date each asset was transferred. Exhibit 4.11.52-1 can be used for this purpose. How the date of insolvency was determined and information relating to Examination's involvement in the case.
  - F. Any attempts to conceal assets and evade payment of the taxes.

#### **Exhibit 4.11.52-1 (11-01-2004)**

##### **ASSETS TRANSFERRED**

\_\_\_\_\_, Transferor

Description of Asset	AC or LAC	Cost	Mortgage or Debt	FMV at date of Transfer	Date and Manner of Disposition
1. Cash		\$0.00	\$0.00	\$0.00	
2. Account Receivable		\$0.00	\$0.00	\$0.00	
3. Notes Receivable		\$0.00	\$0.00	\$0.00	
4. Inventory		\$0.00	\$0.00	\$0.00	
5. Furniture/ Fixtures		\$0.00	\$0.00	\$0.00	
6. Equipment		\$0.00	\$0.00	\$0.00	
7. Real Property		\$0.00	\$0.00	\$0.00	
8. Securities		\$0.00	\$0.00	\$0.00	
9. Other		\$0.00	\$0.00	\$0.00	
		\$0.00	\$0.00	\$0.00	
		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
Totals		\$0.00	\$0.00	\$0.00	

AC = Adequate consideration given

LAC = Less than adequate consideration given

**Exhibit 4.11.52-2 (11-01-2004)**  
**Analysis of Transferor's Liability**

\_\_\_\_\_, Transferor

For the tax year ended _____		
Tax per Return (TC 150)		\$0.00
Less: Payments (TC 670)	\$0.00	
Fed. Tax Deposits (TC 650)	<u>\$0.00</u>	
Total payments		<u>\$0.00</u>
Tax Balance Due		\$0.00
Penalties:		
Delinquency (TC 166 & 160)	\$0.00	
Estimated Tax (TC 176)	\$0.00	
Fail to Deposit (TC 180 & 186)	\$0.00	
Fail to Pay (TC 276)	\$0.00	
Negligence (TC 350)	\$0.00	
Other Penalties:	\$0.00	
	<u>\$0.00</u>	
Total Penalties		\$0.00
Interest (TC 196 & 190)		\$0.00
Fees/Collection Costs		<u>\$0.00</u>
Total Transferor's Liability (A)		<u>\$0.00</u>
Total Assets Transferred (B)		<u>\$0.00</u>

If (A) exceeds (B), the transferee's liability is limited to the amount at (B).

**Exhibit 4.11.52-3 (11-01-2004)**  
**Example Of A Transferee Report**

TRANSFEREE REPORT

John Jones, Transferee of the assets  
 (Address)

of

Fat Chance Corporation, Transferor  
 (Address)

Return Form: 1120

Years or Periods: 9603 & 9303

**FACTS:**

Articles of Dissolution were granted by Superior Court of Fulton County to Fat Chance Corporation on October 1, 1997. See Workpapers 503.04 for copy of such dissolution order of the court.

The balance sheet of the corporation as of 03/31/1996 (last tax year prior to the dissolution) disclosed the following financial condition (if filed with workpapers show workpaper(s) and page(s)).

<u>ASSETS</u>	
Cash	\$144,000
<u>LIABILITIES &amp; CAPITAL</u>	
Miscellaneous Liabilities	\$ 6,000
Capital Stock - 100 shares	80,000
Surplus	58,000
Total	\$144,000

On July 31, 1996, the miscellaneous liabilities were paid in full.

On July 31, 1996, the corporation received a \$40,000 tax refund from the Service resulting from the allowance of a tentative carryback adjustment based on a carryback loss to the fiscal year ended March 31, 1993 from the fiscal year ended March 31, 1996. See the transcript on WP 503.05.

While the corporation was being liquidated, it maintained a bank account and made the following distributions to its shareholders from said account in the C & S National Bank - Account # 12-34567. See copies of the checks in WP's 503.07 to 503.11.

Check #	Date of Check	Checks made payable to stockholders			Totals
		Jones	Smith	Adams	
10460	08/01/1996	\$6,900			\$6,900
10461	08/01/1996		\$65,500		\$65,500
10462	08/01/1996			\$65,500	\$65,500
10463	09/01/1996	\$2,000			\$2,000
10464	09/01/1996		\$19,000		\$19,000
10465	09/01/1996			\$19,000	\$19,000
Totals		\$8,9000	\$84,550	\$84,550	\$178,000
		=====	=====	=====	=====

There was no balance left in the bank account and the corporation retained no assets of any nature for payment of possible tax liabilities. Each of the above checks endorsed by payees and deposited in their respective bank accounts, each account located at C&S National Bank.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LINDA K. STONE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.:
	)	
	)	Plaintiff demands trial by jury.
UNITED STATES OF AMERICA	)	
	)	Filed Electronically
Defendant.	)	

**COMPLAINT TO QUIET TITLE**

Plaintiff, LINDA STONE, by and through her attorneys, Robert E. McKenzie and Kathleen M. Lach, (Arnstein & Lehr LLP, *of counsel*) and for her action against UNITED STATES OF AMERICA, to quiet title to certain property, states as follows:

**Introduction**

1. This is an action to quiet title to certain real property on which Defendant United States has claimed a "Nominee or Alter-Ego" lien.
2. Linda K. Stone ("Plaintiff") is a resident of Lake County, Illinois.
3. The subject property is located in Lake County, Illinois.
4. Plaintiff is the owner of the property, and currently resides on the property.
5. Defendant is the United States of America.

**Jurisdiction and Venue**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1340. The United States has consented to be sued in this action by virtue of 28 U.S.C. § 2410(a).
7. Venue in this Court is proper pursuant to 28 U.S.C. §1402(c) which provides that any civil action against the United States may be brought in the judicial district where the property is located or where the event which gave rise to the cause of action occurred.

**Background**

8. Plaintiff is the legal and record owner of the property (the "Property") described and located at:

LOT 9 IN DEERE PARK SUBDIVISION OF PART OF THE NORTH ½ OF THE SOUTHWEST ¼ OF FRACTIONAL SECTION 31, TOWNSHIP 43 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED OCTOBER 16, 1924, AS DOCUMENT 24732 IN BOOK "N" OF PLATS, PAGE 49 IN LAKE COUNTY, ILLINOIS. COMMONLY KNOWN AS 366 SHERIDAN ROAD, HIGHLAND PARK, ILLINOIS 60035

Plaintiff's ownership is evidenced by a Quit Claim Deed, dated April 20, 1993, recorded with the Lake County, Illinois Recorder of Deeds, as Document No. 3317812, attached as "Exhibit A".

9. Defendant has claimed an interest in the Property, adverse to Plaintiff.

10. On June 22, 2011, Defendant filed a Notice of Federal Tax Lien (the "Lien") on the Property described in Paragraph 8. The Lien was filed against this specific asset of Linda Stone, as nominee of Jack Stone.

11. The Lien was prepared and filed in Schiller Park, Illinois, by Revenue Officer Lawrence M. Kagan, an employee of the Internal Revenue Service.

12. Plaintiff received a copy of the Notice of Federal Tax Lien Filing – Nominee or Alter Ego, in a letter dated June 22, 2011.

13. Copies of the Notice of Federal Tax Lien and Lien are attached as "Exhibit B".

14. Defendant's claim is a cloud on Plaintiff's title to the Property; having no force and effect.

15. The basis of Defendant's improper Lien filed against Plaintiff is the unpaid federal income taxes of Jack Stone, Plaintiff's husband, for tax years 2001, 2002, 2003, 2005, 2006, 2007 and 2008.

16. Jack Stone transferred to Plaintiff by a quit claim deed all right, title and interest in the Property, recorded with the Lake County Recorder of Deeds on April 20, 1993. The Property had been held by Plaintiff and Jack Stone in joint tenancy since its purchase in 1977.

17. Prior to the transfer, Plaintiff provided Jack Stone with funds to pay older debts, including tax debts.

18. From 1994 forward, Jack and Linda Stone filed separate federal income tax returns.

19. Jack and Linda Stone have been careful about keeping their financial affairs separate since Jack Stone has children from a previous marriage, and they did not want any legal issues arising in connection with estate inheritance matters.

20. Plaintiff had an independent source of funds in the form of inherited monies. A portion of Plaintiff's inherited funds was used to make improvements on the home.

21. Plaintiff also loaned funds to Jack Stone, which he repaid in part by quit claiming the home to Plaintiff, and also by making payments on the home mortgage.

22. The nominee Lien claimed by the United States on the Property is without validity.

23. Plaintiff, as legal owner of the Property, seeks a declaration the United States has no right, title, or interest in the property which legally belongs to Plaintiff.

WHEREFORE, Plaintiff requests that this Court:

1. Declare that the claims of the United States against the Property are of no validity.
2. Declare that Plaintiff is the owner in fee simple of the Property, and that Defendant United States has no right, title, or interest in the property.
3. Award Plaintiff attorneys' fees and costs of this action pursuant to Internal Revenue Code §7430.
4. Award Plaintiff such other and further relief as the Court deems proper.

Respectfully submitted,

LINDA STONE

/s/  
By one of her attorneys

Robert E. McKenzie  
Kathleen M. Lach

Of Counsel:  
Arnstein & Lehr LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606  
(312) 876-7100  
Firm No. 25188

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

T & Z MEAT INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.:
	)	
	)	Plaintiff demands trial by jury.
UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	

**COMPLAINT**

NOW COMES, the Plaintiff, T & Z MEAT INC., by and through their attorneys, Robert E. McKenzie and Kathleen M. Lach, (Arnstein & Lehr LLP, of counsel) complains against Defendant, the UNITED STATES OF AMERICA, as follows:

**INTRODUCTION**

1. The action arises under 28 U.S.C. §1346(e) and 26 U.S.C. §7426, as herein more fully described herein.
2. Plaintiff is T & Z MEAT INC., which operates in Chicago, County of Cook, State of Illinois.
3. Defendant is UNITED STATES OF AMERICA.

**JURISDICTION AND VENUE**

4. This cause of action is a wrongful levy suit brought pursuant to Internal Revenue Code (“IRC”) §7426(a)(1) which provides that any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States.
5. Jurisdiction is based upon 28 U.S.C. §1346(e), which provides that the District Court shall have original jurisdiction of any civil action arising under IRC §7426.
6. Venue in this Court is proper pursuant to 28 U.S.C. §1402(c) which provides that any civil action against the United States may be brought in the judicial district where the property is located or where the event which gave rise to the cause of action occurred.

## FACTS

7. Vasiliki Tountas, d/b/a Chicago Meats, ran a retail market in Chicago through 2009, which failed to meet its obligations with MidWest Bank and Trust .

8. Vasiliki Tountas, d/b/a Chicago Meats, also failed to pay its federal employment tax obligations for tax periods 9/30.2008 through 3/31/2010.

9. MidWest Bank and Trust filed a foreclosure suit against Vasiliki Tountas d/b/a/ Chicago Meats on \_\_\_. See Complaint attached hereto and made a part hereof as Exhibit A.

10. A receiver, High Ridge Partners, was appointed to step in and run the business during the foreclosure proceeding.

11. During the period of time in which the foreclosure proceeding was pending, Anastasios Ziabaras contacted MidWest Bank, interested in purchasing the assets of the business.

12. Anastasios Ziabaras worked out an arrangement with High Ridge Partners to manage the business during the foreclosure process. See the Management Agreement attached as Exhibit \_\_\_. The management agreement took effect on May 18, 2009.

13. In December, 2009, Anastasios Ziabaras reached an agreement with MidWest Bank to purchase the foreclosed assets of Vasiliki Tountas d/b/a/ Chicago Meats from MidWest Bank. The closing binder from this transaction is attached hereto and made a part hereof as Exhibit \_

14. Anastasios Ziabaras purchased the assest of Vasiliki Tountas d/b/a/ Chicago Meats from MidWest Bank.

15. On April 14, 2011, Defendant United States of America by its agency, the Internal Revenue Service (hereinafter, the "Service") issued a levy to Integrity Payment Systems, alleging T & Z Meats was an alter-ego of Vasiliki Tountas d/b/a Chicago Meats, for its unpaid federal employment tax liabilities, a copy of which is attached hereto as Exhibit A.

16. The levy was issued for unpaid federal employment taxes of Vasiliki Tountas, d/b/a Chicago Meat Market.

17. The levy and/or other potential unknown levies continue in effect.

18. There may be other levies that have been issued, but Defendant has refused to provide counsel with copies of those documents.

19. Further, on April 14, 2011, Defendant issued to Plaintiff a Notice of Federal Tax Lien Filing-Nominee Lien or Alter –Ego. A copy of the Notice is attached hereto and made part hereof as Exhibit \_\_\_.

20. Plaintiff is entitled to and is the rightful owner of the funds in its accounts.

21. Payments are utilized and relied upon to pay, among other things, its employees, payroll tax obligations, and vendors.

22. The levy has caused irreparable harm not only to Plaintiff but also to its employees, and the continued levy puts its employees at risk of losing their earnings.

23. Defendant has failed and refused to release the levied funds.

24. Defendant has refused to even explain the basis of its attempt to claim Plaintiff is an alter-ego of Defendant.

25. The revenue officer assigned to this case is Mr. Rogers, from the 230 S. Dearborn, Chicago, IRS collection division.

26. The acting manager approving the Revenue Officer's decision is Ms. Hallas of the same office.

27. Both Mr. Rogers and Ms. Hallas, after having been presented the closing binder for the sale of the property from MidWest Bank to Plaintiff, stated that the material was irrelevant, and the transaction was not an "arms length" transaction.

28. Defendant has appealed to the assigned Internal Revenue Service revenue collection officer, his manager, the Territory manager, and the Internal Revenue Service Taxpayer Advocate, and its requests for release of the levy have been repeatedly denied.

29. The Plaintiff has no adequate remedy at law to prevent the purported seizure and the Plaintiff will continue to suffer irreparable harm if the funds are not immediately returned, and no further levy action is taken.

30. Each day that the funds in Plaintiff's account are frozen represents a day wherein it is prevented from paying its ongoing obligations including payroll, taxes, utilities, landlord, and vendors.

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

Enter a preliminary injunction enjoining the Internal Revenue Service from issuing any further levies during the pendency of this suit.

1. Enter a judgment ordering a release of the levy on the above-described property and ordering Defendant to return the any levied property/funds to Plaintiff.
2. Award the Plaintiff's attorney's fees and costs pursuant to IRC §7430.
3. Such other and further relief as this Court deems just.

Respectfully Submitted,

T & Z MEAT INC.,

---

By One of its Attorneys

Robert E. McKenzie  
Kathleen M. Lach

Of Counsel:  
Arnstein & Lehr LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606  
(312) 876-7100  
Firm No. 25188



## CERTIFICATE OF SERVICE

The undersigned, \_\_\_\_\_, an attorney, certify that I served a copy of the attached Notice of Motion and Plaintiff's Emergency Motion for Temporary Restraining Order and Permanent Injunction upon the attached Service List by serving a copy of the aforementioned upon the persons listed by using the CM/ECF system or by placing same in the U.S. Mail via Certified Mail as specified on the attached Service List before the hour of 5:00 p.m. on this the 28<sup>th</sup>, April, 2011.

Mr. Patrick Fitzgerald  
United States Attorney for the Northern District of Illinois  
219 South Dearborn Street  
Suite 500  
Chicago, Illinois 60604

### **Via Certified Mail:**

Mr. Eric H. Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Mr. Eric H. Holder  
U.S. Department of Justice  
P.O. Box 55  
Ben Franklin Station  
Washington, D.C. 20044

Internal Revenue Service  
Chief Counsel  
Washington, D.C. 20224

Ms. Miriam Howe  
Office of Area Counsel  
Internal Revenue Service  
200 West Adams Street  
Chicago, Illinois 60606

### **Also by email and facsimile to:**

Nathan L. Strup  
Trial Attorney  
U.S. Department of Justice, Tax Division  
P.O. Box 55  
Washington, D.C. 20044  
(202) 514-6058/Fax: (202) 514-5238  
[Nathan.L.Strup@usdoj.gov](mailto:Nathan.L.Strup@usdoj.gov)

## SERVICE LIST

Mr. Eric H. Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Mr. Eric H. Holder  
U.S. Department of Justice  
P.O. Box 55  
Ben Franklin Station  
Washington, D.C. 20044

Internal Revenue Service  
Chief Counsel  
Washington, D.C. 20224

Ms. Miriam Howe  
Office of Area Counsel  
Internal Revenue Service  
200 West Adams Street  
Chicago, Illinois 60606

Mr. Patrick Fitzgerald  
United States Attorney for the Northern District of Illinois  
219 South Dearborn Street  
Suite 500  
Chicago, Illinois 60604

Nathan L. Strup  
Trial Attorney  
U.S. Department of Justice, Tax Division  
P.O. Box 55  
Washington, D.C. 20044  
(202) 514-6058/Fax: (202) 514-5238  
[Nathan.L.Strup@usdoj.gov](mailto:Nathan.L.Strup@usdoj.gov)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

T & Z MEAT INC.,	)	
	)	
Plaintiff,	)	Plaintiff,
	)	
vs.	)	No.: 11-cv-02699
	)	
	)	Honorable Ronald A. Guzman
UNITED STATES OF AMERICA	)	
	)	Magistrate Young B. Kim
Defendant.	)	

**PLAINTIFF'S EMERGENCY  
MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PERMANENT INJUNCTION**

NOW COMES, the Plaintiff, T & Z Meat Inc., by and through its attorneys, Robert E. McKenzie and Kathleen M. Lach, (Arnstein & Lehr LLP, of counsel) and for this Motion for Temporary Restraining Order and Permanent Injunction, states as follows:

**INTRODUCTION**

31. The action arises under 28 U.S.C. §1346(e) and 26 U.S.C. §7426 for wrongful levy by the Internal Revenue Service (the "Service") of Plaintiff's funds.
32. The Complaint was filed on April 22, 2011.
33. Funds (credit card payments) due to Plaintiff have already been taken by Defendant, and Plaintiff's bank accounts are frozen.
34. The continued levy threatens the ongoing viability of this small business.

## BACKGROUND

35. Plaintiff purchased the assets of Vasiliki Tountas, d/b/a Chicago Meats (hereinafter "Tountas") following the initiation of a foreclosure action by Midwest Bank and Trust Company ("Midwest").

36. Plaintiff purchased the assets from Midwest.

37. Tountas ran into financial difficulties while running the business, causing the foreclosure action by Midwest, and also incurring significant federal tax liabilities.

38. During the period of time in which the foreclosure proceeding was pending, Anastasios Ziabarar, contacted Midwest, and expressed an interest in purchasing the assets of the business.

39. Anastasios Ziabarar worked out an arrangement with the receiver appointed by the Court, High Ridge Partners, to manage the business during the foreclosure process.

40. In December, 2009, Anastasios Ziabarar reached an agreement with Midwest to purchase the foreclosed assets of Tountas from Midwest, and later formed T & Z Meats Inc.

41. Defendant has improperly issued the nominee/alter-ego lien and levy, causing significant harm to Plaintiff and its ability to continue in business.

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief: Enter a temporary restraining order enjoining the Internal Revenue Service from issuing any further levies or receiving any levied funds during the pendency of this suit.



CERTIFICATE OF SERVICE

The undersigned, Kathleen M. Lach, an attorney, certifies that a true and correct copy of the foregoing was served by with the clerk of the United States District Court for the Northern District of Illinois using the CM/ECF system which will send notification of such filing to the following:

Mr. Eric H. Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Mr. Eric H. Holder  
U.S. Department of Justice  
P.O. Box 55  
Ben Franklin Station  
Washington, D.C. 20044

Internal Revenue Service  
Chief Counsel  
Washington, D.C. 20224

Ms. Miriam Howe  
Office of Area Counsel  
Internal Revenue Service  
200 West Adams Street  
Chicago, Illinois 60606

Mr. Patrick Fitzgerald  
United States Attorney for the Northern District of Illinois  
219 South Dearborn Street  
Suite 500  
Chicago, Illinois 60604

By:  
\_\_\_\_\_/s/\_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

T & Z MEAT INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.: 11-cv-02699
	)	
	)	Honorable Ronald A. Guzman
UNITED STATES OF AMERICA	)	
	)	Magistrate Young B. Kim
Defendant.	)	

**TEMPORARY RESTRAINING ORDER**

This matter coming before the Court on Plaintiff T & Z Meat Inc.'s Emergency Motion for Temporary Restraining Order and Permanent Injunction, and Defendant United States of America's opposition thereto, counsel for Plaintiff and Defendant appearing in open court; the Court having heard oral argument from both parties and the Court finding the requirement for issuance of this Temporary Restraining Order have been met by Plaintiff,

IT IS HEREBY ORDERED:

1. Plaintiff's request for Temporary Restraining Order is granted as provided herein;
2. Defendant is enjoined for 14 days, beginning on the date this order is entered, from the issuance or filing of any further notices of federal tax liens or levies against of T & Z Meat Inc. as the alter-ego of Vasiliki Tountas d/b/a Chicago Meat Market;
3. Defendant, through the Internal Revenue Service, shall issue releases of all outstanding levies and property subject to levy issued against the assets of T & Z Meat Inc. as alter-ego of Vasiliki Tountas d/b/a Chicago Meat Market, and contact, by telephone, the recipient of such levies and advise them of such releases; and,
4. Plaintiff shall, by no later than close of business on Monday, May 9, 2011, and on an ongoing basis going forward during the pendency of this action, disclose and produce to Defendant's counsel complete and accurate copies of its books and records, whether in paper or digital form, including, but not limited to, all financial statements, balance sheets, income statements, accounting ledgers, accounting journals, and any other accounting documents, payroll records, checks received by Plaintiff, checks issued by Plaintiff, bank account

statements, merchant payment accounts, loan documents and account statements, online payment accounts, and state, local, and federal tax returns. Plaintiff shall not wait or withhold such disclosures and productions until all the aforementioned materials are gathered, but rather shall immediately begin complying with the requirements set forth in this paragraph. Plaintiff on an ongoing basis going forward, during the pendency of this action, shall provide Defendant's counsel with monthly updates of the above referenced books and records.

Entered:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge Ronald A. Guzman

Robert E. McKenzie  
Kathleen M. Lach  
Of Counsel:  
Arnstein & Lehr LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606  
(312) 876-7100  
Firm No. 25188

## Problems

**1:** Jim Shortz previously owned JS Contractors Inc. The company operated for 2009 to 2012. During that time the home repair and general contracting business was in a terrible state as a result of the housing collapse. In order to secure jobs Jim underbid many contracts. Because of his low bids he was unable to make a profit in the business. In order to stay open Jim ceased filing and paying employment taxes. During the period from 2009 to 2012 the company failed to pay \$350,000 in employment taxes. In July 2012 Jim was contacted by a revenue officer who demanded that he file all the delinquent tax returns. Within one week of the revenue officer's visit Jim filed all delinquent returns without payment. The company had few assets at that time. It had a pickup truck valued at \$5000. It had miscellaneous tools valued at \$3000. It had Accounts Receivable of approximately \$60,000. Within two weeks of filing the delinquent tax returns on behalf of JS contractors Inc. Jim ceased operations. He formed a new company Nucor Inc. which began operations as a general contractor. After formation of Nucor Inc. all payments received on the Accounts Receivable of JS Contractors Inc. was deposited into the bank account of Nucor Inc. The pickup truck was sold in the sale proceeds were deposited in Jim's personal account. Nucor Inc. continues the miscellaneous tools. **Analyze the risks that Nucor faces.**

**2.** Ima Latepayer operated Ima's Decorating Inc. from 2011 to 2012. During that time Ima was unable to develop a profitable decorating business because of general business conditions. She failed to pay employment tax liabilities due from the company. In July of 2012 she received collection notices for all of her that outstanding employment tax obligations in the amount of \$150,000. The business had few assets other than office equipment. It had no Accounts Receivable. After receipt of IRS collection notices Ima ceased operations of Ima's decorating Inc. Within days of the IRS notices her daughter Mary incorporated as Mary's decorating Inc. The new company began operating as a decorating company. Mary was president and sole board member of Mary's decorating Inc. She hired her mother Ima as a decorator. Mary received a salary of \$30,000 per year and Ima received a salary of \$75,000 per year. The new company used the office equipment owned by Ima's and used the same telephone number. The company negotiated a new lease with the landlord of the prior company.. Many of the customers of the former company used the services of Mary's Decorating. **Analyze the risks that Mary's faces.**

**3.** Rapid Plumbing Inc. operated from 2011 to 2012 doing home plumbing repair. The company was solely owned by John Plumber. John's primary duties with rapid were sales and management. After the company incurred tax debt for employment taxes of \$200,000 John voluntarily closed the company. He collected the remaining Accounts Receivable and used the proceeds to pay suppliers. He liquidated the company's tools and equipment and also used the proceeds to pay suppliers. After liquidating Rapid Plumbing Inc. John received a job offer from Slow Plumbing Inc. He was hired as an assistant vice president in charge of sales. John utilized all of his contacts as a sales

representative of Rapid to successfully sell plumbing services on behalf of Slow. Use the skills he gained At Rapid to become a very successful salesman for Slow. **Analyze the risks that Slow and John face.**

***Portions Reprinted from***

***REPRESENTATION BEFORE THE COLLECTION DIVISION OF  
THE IRS***

***by***

***Robert E. McKenzie***

***WITH PERMISSION FROM***

***THOMSON WEST  
Rochester, NY***

***All Rights Reserved***

***COPYRIGHT 2013***