

Too Clever by Half- A Tax Lien Tale.

Sometimes people do the dumbest things when they think they are being tricky, clever, or both. This principle is illustrated nicely by a recent opinion in an action brought to enforce a federal tax lien, *United States v. Tyler*, 2012 U.S. Dist. LEXIS 34093 (E.D. Pa. Mar. 13, 2012).

David J. Tyler, the taxpayer, was assessed in 2002 for additional tax liabilities from 1992 through 1998 but failed to pay, triggering a federal tax lien under Section 6321 of the Internal Revenue Code. In August 2003, the taxpayer and his wife transferred their residence, which was held in a tenancy by the entirety, to Mrs. Tyler for \$1.00. In March 2004, the IRS filed a notice of federal tax lien for over \$400,000 in unpaid taxes, interest and penalties with the Prothonotary of Delaware County, Pennsylvania, where the Tylers lived; the reason for the delay in filing is unclear.

In August 2006, the taxpayer died, and his wife then died in June 2007. While no formal estate was established for the taxpayer, co-executors were appointed for Mrs. Tyler's estate. The IRS then sent letters advising them that the residence that had been transferred to Mrs. Tyler was subject to a federal tax lien and indicated that the executors were obligated to satisfy the lien out of the assets of the estate.

Instead, the co-executors transferred the residence out of the estate to one of the executors for \$1.00; the transfer was made without the approval of the probate court. The property was then sold for total net proceeds of over \$300,000, which were invested (and lost) in the stock market.

The United States then brought an action against the two executors, seeking to reduce the 2002 tax assessments to judgment and to set aside the transfers of the residence as fraudulent. After discovery, the parties filed cross motions for summary judgment, with the government seeking a declaration that it had a valid lien on the property when the executors transferred it and a judgment against the executors for the value of one half of the proceeds. On the merits, the court ruled that the lien had continued to encumber the property as of the date when the defendants transferred it out of Mrs. Tyler's estate.

First, the court concluded that the taxpayer's death did not extinguish the tax lien. While normally the taxpayer's death would extinguish the lien against entireties property, the court noted that this rule did not apply if the entireties estate had already been terminated. 2012 U.S. Dist. LEXIS 34093 at *18-*19. The court then concluded that the deed transferring the property to Mrs. Tyler plainly reflected the intent to terminate the entireties estate. *Id.* *19-*21. Thus, although the lien would have been extinguished in the absence of the transfer to Mrs. Tyler, it was not because of Mr. Tyler's decision to make a transfer that destroyed the entireties estate.

Second, the court concluded that the lien was still an encumbrance against the property in Mrs. Tyler's hands. This turned upon a straight-forward application of Section 6323 of the Code. Under Section 6323(a) of the Code, a purchaser of property who buys before a notice of federal tax lien is filed will take the property free and clear of the tax lien. Section 6323(h)(6) then defines a "purchaser" as someone "who for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice" Applying these provisions, the Court had little difficulty determining that the transfer to Mrs. Tyler for \$1.00

did not make her a “purchaser” within the meaning of Section 6323 of the Code. 2012 U.S. Dist. LEXIS 34093 at *22-*25.

After briefly addressing some challenges to the government’s collection procedures, the court then concluded that the executors of Mrs. Tyler’s estate were liable for one-half the value of the real estate that had been encumbered by the lien. This holding rested upon its conclusion that they were fiduciaries and were therefore liable because they made a distribution of the estate that rendered it insolvent after they had received actual notice of the federal tax lien. 2012 U.S. Dist. LEXIS 34093 at *27-*32.

Jim Malone is a tax lawyer based in Philadelphia. © 2012, MALONE LLC.