

# Federal Tax Liens and Litigation

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## Topics

- Federal Tax Lien Overview
- Select Bankruptcy Code Sections & Federal Tax Liens
- Ethics Discussion

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## Federal Tax Lien Overview

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## Statutory Federal Tax Lien

- I.R.C. § 6321- Statutory Tax Lien  
If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount ... shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.
- I.R.C. § 6322- Period of Tax Lien  
Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed ... is satisfied or becomes unenforceable by reason of lapse of time.
- After a tax has been assessed and a demand for payment has been made upon the taxpayer, a lien arises in favor of the United States upon all property (real and personal) of the taxpayer until the tax is paid, or by "lapse of time." Lapse of time is generally 10 years from date of assessment, during which the IRS has not attempted to collect the tax either by suit or distraint (see § 6502).

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## Statutory Federal Tax Lien

- A federal tax lien applies to property owned by the delinquent taxpayer at any time during the lifetime of the tax lien, and includes property acquired after the lien arose. [Treas. Reg. §301.6321-1];
- *United States v. National Bank of Commerce*, 472 U.S. 713, 719-720 (1985) (holding that section 6321's "statutory language 'all property and rights to property,' ... is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer may have.")

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### Statutory Federal Tax Lien

- Whether property or a property interest is owned by a delinquent taxpayer and thus can be subjected to the federal tax lien is a matter generally governed by state law. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940) (“State law creates legal interests and rights.”).
- A federal tax lien, however, does not attach to property in which the taxpayer has no interest under state law. See *Slodov v. United States*, 436 U.S. 238 (1978).

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### Statutory Federal Tax Lien

- Courts thus look to state law to determine what rights—if any—the taxpayer has in the property the United States seeks to reach, and then to federal law to determine whether the taxpayer’s state-delineated rights qualify as “property” or “rights to property” to which a federal lien can attach. *Slodov v. United States*, 436 U.S. 238, 259 n.19 (1978) (“We have held that the extent of the tax debtor’s interest in the property is determined by state law, and that the lien cannot attach when the debtor has no interest.”).

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## Statutory Federal Tax Lien

*In re Orr*, 180 F.3d 656 (5th Cir. 1999)

Facts: Prior to filing bankruptcy, Mr. Orr (Debtor) had failed to file his federal income tax returns for tax years 1984 through 1991. After an IRS audit, he entered into an agreement consenting to assessment and collection of the prepetition taxes. Despite notice and demand for payment, Mr. Orr did not pay his IRS liabilities.

On Jan. 11, 1993, IRS filed NFTL for the 1984-1991 taxes in the personal and real property records of Nueces County, TX. IRS filed second tax lien in 1993 against Mr. Orr for 1992 tax year in both personal and real property records of Nueces County.

Mr. Orr also was the beneficiary of a spendthrift trust established by his grandmother in 1965. The trust provided that Mr. Orr, upon obtaining age 30, shall receive all of the net income of the trust either annually or at more frequent intervals.

Mr. Orr filed Ch. 7 in 1995 and received a discharge.

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## Statutory Federal Tax Lien

*In re Orr*, 180 F.3d 656 (5th Cir. 1999)

Mr. Orr/Debtor brought A/P to determine whether the IRS's tax liens attached to any interest of the Debtor in the spendthrift trust (or the trust's assets) to secure payment of the Orr's IRS tax liabilities for 1984-1991. The Debtor and IRS stipulated that Orr's personal liability for the 1984-1991 taxes were discharged, but not for his 1992 liability pursuant to BC sec. 727.

Fifth Cir.- key issue on appeal was whether a federal tax lien attaches to a spendthrift trust beneficiary's equitable interest in the trust itself or to each individual distribution as it is paid to the beneficiary.

Fifth Cir.- **held** that the IRS's tax liens on income distributions from the spendthrift trust attached to future distributions at the time of the creation of the tax liens, and not as of the time each distribution was made. The IRS's liens predated and survived the Debtor's bankruptcy.

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