

Tax Collection by the Department of Justice Tax Division¹

Key concepts and considerations

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¹ The following contains the personal views of the authors and is not the official policy of the United States Department of Justice, the Tax Division, or any other Government agency. This information is not intended as a comment on any pending litigation.

I. DOJ Tax Division generally,

- a. Mission: The Tax Division's mission is to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation, in order to promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law.
- b. Organization:
 - i. More than 350 attorneys in fourteen civil, criminal, and appellate sections.
 - ii. All Tax Division sections are based in Washington, D.C., except for the Southwestern Civil Trial Section, which is located in Dallas, Texas.
 - 1. U.S. Attorney offices in L.A., San Francisco and S.D.N.Y. have their own internal tax sections.
 - iii. Southwest Civil Trial Section (Dallas): Currently employs 19 attorneys, and primarily covers cases in Texas and New Mexico - occasionally handling suits in other states.
- c. What we do:
 - i. Defend taxpayer refund suits
 - ii. Defend TEFRA partnership and S Corp. redetermination suits
 - iii. Defend IRS and its employees in damages suits
 - iv. Enforce and defend IRS administrative summonses and foreign document requests
 - v. Defend claims and motions regarding taxes in bankruptcy cases
 - vi. Defend FOIA suits against the IRS
 - vii. Defend or remove actions filed in state court
 - viii. Enforce collection of federal taxes
 - ix. Enforce collection of FBAR penalties. 31 U.S.C. § 5314

II. How Tax Collection by DOJ Tax differs from normal debt collection

- a. Special tools for collection
- b. Very few limitations

III. Commons Tools used by DOJ for collection of taxes

- a. Judgments
- b. Federal Tax Liens
- c. Federal common law remedies
- d. State law remedies
- e. Federal Debt Collection Procedures Act
- f. IRS administrative collection

IV. Some commonly raised defenses do not apply

- a. Federal Statute of limitations is generally 10 years from date of assessment. 26 U.S.C. § 6502
 - i. Numerous extensions or suspensions apply. 26 U.S.C. §§ 6503, 6320, 6330.
- b. State law cannot operate to disclaim property, exempt property from, or nullify a federal tax lien, *Drve v. United States*, 528 U.S. 49 (1999) (Taxpayer's interest in his mother's estate was reached by the federal tax lien, despite attempted disclaimer: federal law controls lien attachment).
- c. The Internal Revenue Manual is not law and not binding on IRS or DOJ. It is adopted solely for the internal administration of the IRS and does not create any rights for the taxpayer. *Ghandour v. United States*, 37 Fed. Cl. 121, 126 n. 14 (1997); *United States v. Horne*, 714 F.2d 206, 207 (1st Cir.1983); *United States v. Will*, 671 F.2d 963, 967 (6th Cir. 1982).
- d. Once tax liability has been referred to DOJ, the disposition of that liability resides with DOJ not IRS. See 26 U.S.C. § 7122
- e. The Taxpayer Advocate is with the IRS and has no jurisdiction on DOJ Tax.
- f. Laches does not apply to the collection of federal taxes. *United States v. Summerlin*, 310 U.S. 414, 416, 60 S. Ct. 1019, 1020, 84 L. Ed. 1283 (1940); *Chevron, U.S.A., Inc. v. United States*, 705 F.2d 1487, 1491 (9th Cir.1983); *In re Fein*, 22 F.3d 631, 634 (5th Cir. 1994); *United States v. First National Bank*, 652 F.2d 882, 890 (9th Cir. 1981); *United States v. Weintraub*, 613 F.2d 612, 618–19 (6th Cir. 1979), *cert. denied*, 447 U.S. 905, 100 S. Ct. 2987, 64 L. Ed.2d 854 (1980); *In re Wyly*, 552 B.R. 338, 624–627 (Bankr. N.D. Tex. 2016).
- g. Divorce decrees and state court determinations of property interests do not control where the United States is not a party. *Comm'r v. Bosch*, 387 U.S. 456, 457, 87 S. Ct. 1776, 18 L.Ed.2d 886 (1967); *McPhee v. I.R.S.*, 2002 WL 1477433 (N.D. Tex., July 5, 2002).
 - i. However, under 26 U.S.C. § 7424, the United States may intervene in any case to assert or defend a tax lien. If not allowed to intervene the adjudication or suit will have no effect upon such a lien.
- h. State law limitations on liability of community property do not apply. *Gray v. United States*, 553 F.3d 410, 413 (5th Cir. 2008); *Medaris v. United States*, 884 F.2d 832, 833–34 (5th Cir. 1989) (holding that the IRS may reach half of a non-liable spouse's sole management community property to satisfy a liable spouse's tax debt).

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