From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint

Going Home for the Holidays? Ask the IRS.

Prior to *United States* v. *Craft* in 2002,[1] the general consensus was that unless the IRS had a common beef against both married taxpayers, the personal residence was safe from action by it. Following the *Craft* decision, the IRS' position was that if one spouse was liable, it could take action against a personal residence held in Tenancy by the Entirety ("TBE"). However, it would choose not to and to wait until the property was sold and then to seek collection of the delinquent taxes owed. We then had a string of cases whereby the IRS continued to assert and expand on this position.[2] A case recently came out that shows the extent to which the IRS may seek to collect on delinquent taxes. See *United States v. Johns,* No. 3:05-cv-308/RV/MD (N.D. Fla. 10/27/06). Although the Taxpayer eventually won, it was an ugly fight, even by the IRS' standards.

The Taxpayer, Lanell, was disabled and had several bouts with cancer. Also, she was not liable for any delinquent taxes. Her ex-husband, with whom she had been divorced for 14 years, owed delinquent taxes. While they were married, they owned their home, which was a trailer home, in TBE. Upon their divorce, they each took a 50% interest as tenants in common. The IRS sought to assert its rights against the ex-husband's interest in the property. Lanell went so far as to argue that the IRS should divide the property and pursue her ex-husband's interest. The IRS wanted to go against the entire property. Thankfully, the Court held that the entire property should not be foreclosed. However, they certainly did jump through a lot of hoops in order to substantiate their reasons for not allowing the foreclosure.

The Court weighed three factors. First of all, whether the government's financial interest would be prejudiced if it only could force a sale of a partial interest. It found that the IRS would be prejudiced because the portion that Lanell wanted to give up was the less valuable half. The second factor taken into account was whether Lanell had a legally recognized expectation that her property would not be subject to a forced sale due to her ex-husband's delinquent taxes. The Court ruled in her favor. The last factor was consideration of the effect that it would have on Lanell, including personal dislocation costs and in practical undercompensation. It is here that they took into account her medical condition, her lack of income and the length of time since the divorce. Upon weighing the factors, they concluded in Lanell's favor.

This has been an arduous fight concerning what steps the IRS will take to collect delinquent taxes when a personal residence is involved. The IRS is certainly painted as the mean old Grinch in *United States v. Johns*. It is hoped that they will be better behaved in the year new (though not expected).

[1] 535 U.S. 274 (2002).

[2] *Popky* v. *United States* (E.D. Pa., No. 03-1487, 6/15/04)

[3] *In re Gallivan* (W.D. Mo., No. 03-60525, 7/23/04)

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