I. Federal Tax Liens

The federal tax lien arises once there has been an assessment, demand has been made and the taxpayer has failed to pay.

As discussed below, the reach of the federal tax lien under IRC section 6321 is very broad, reaching all of the taxpayer's property and rights to property, including after-acquired property. When a taxpayer's property is not in the hands or name of the taxpayer, or where the taxpayer has transferred property, the Internal Revenue Service (the "Service") has used a number of theories to reach the property including: nominee, alter-ego, fraudulent conveyance, and transferee liability. A key distinction between nominee, alter-ego on the one hand, and transferee or fraudulent conveyance liability on the other is that in the later the transferee is generally liable only for the value of the property transferred. In the former situation the nominee/alter-ego is responsible for the entire amount due.

A. Assessment

The assessment is made by recording the liability in the office of the Commissioner of Internal Revenue or his delegate. IRC § 6203. Notice of the assessment and demand for payment is required to be sent to the taxpayer within 60 days of the assessment.[1] IRC § 6303(a).

B. Period of Lien

A lien (the statutory lien) arises upon the failure to pay after demand for payment is made.[2] IRC § 6321. The lien dates back to the date of assessment and extends until the liability for the assessed amount is satisfied, or until it becomes unenforceable by passage of time, generally ten years from the assessment date. IRC §§ 6322, 6502.

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[1] Jeopardy Assessment: If the Secretary is concerned that the assessment or collection of tax will be jeopardized by delay, an immediate assessment can be made and notice and demand must then be made. IRC §§ 6851, 6861, 6862.

[2] The lien is sometimes referred to as the "secret lien."

C. <u>Encumbrance of Property</u>

The federal tax lien attaches to all of the taxpayer's property and rights to property. IRC § 6321. During its life it also attaches to all after-acquired property. What constitutes property or rights to property is a matter of state law. If there is a property interest recognized under state law, the federal tax lien attaches to it. Federal law determines the manner and extent to which the federal tax lien encumbers the property interest.[3] *Aquilino v. United States*, 363 US 509 (1960). *See also Gardner v. United States*, 34 F.3d 985 (10th Cir. 1994).

The lien does not attach to property properly transferred from a taxpayer prior to the creation of the lien. If property to which the lien attaches is transferred, it is transferred subject to the lien, although the lien will not be valid as against certain interests. *See* IRC § 6323.

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[3] Accordingly, state laws that protect property from creditors do not apply to the federal tax lien. The state homestead exemption, for example, does not prevent the attachment of the federal tax lien. There are some exemptions under federal law, such that some property is exempt from levy (although not exempt from the federal tax lien). *See* IRC § 6334.

Property exempt from levy:

(1) wearing apparel and school books,
(2) fuel, provisions, furniture and personal effects,
(3) books and tools of a trade, business or profession,
(4) unemployment benefits,
(5) undelivered mail,
(6) certain annuity and pension payments,
(7) workmen's compensation,
(8) judgments for support of minor children,
(9) minimum exemption for wages, salary and other income,
(10) certain service-connected disability payments,
(11) certain public assistance payments,
(12) assistance under job training partnership act,
(13) residences in small deficiency cases,
(14) principal residences unless approved by judge or magistrate of district court and other assets will not pay liability, and
(15) certain business assets unless approved by appropriate representative and Secretary determines that collection of tax in jeopardy.

D. Lien Priority

The priority of the federal tax lien with respect to other encumbrances constitutes a question of federal law. *See* IRC § 6323. The general rule with respect to competing interests is that "first in time is first in right." The federal tax lien is perfected, however, by the filing of the notice of lien. The filed federal tax lien will take priority over unsecured interests in the property.

Certain interests compete for priority with a *filed* federal tax lien.[4] It is the date of filing that will determine the relative priority of the federal tax lien with respect to many interests. In order for a federal tax lien to compete for priority with many interests, the lien must be filed, giving the world constructive notice of the lien's existence.[5]

E. Administrative Collection – Levy / Seizure

Section 6331 allows the Service to levy upon property (and rights to property) if a taxpayer liable to pay tax refuses to pay within 10 days after notice and demand. IRC § 6331(a). In addition to the 10-day waiting period after notice and demand, the Secretary must give written notice of intent to levy at least 30 days before the levy. IRC § 6331(d)(1),(2).[6]

[4] Certain interests take priority over an unfiled federal tax lien: purchasers, holders of security interests, mechanic's lienor, and judgment lien creditor. There are superpriority interests that take priority over a filed federal tax lien, and semi-superpriority interests, which take priority provided certain criteria are met. See Section 6323(c) and (d).

[5] The taxpayer has notice and appeal rights (right to one hearing under this section per tax period) with respect to the filing of the notice of federal tax lien. IRC § 6320.

[6] This waiting period does not apply if the Secretary makes a finding that the collection of the tax is in jeopardy (the jeopardy levy). IRC § 6331(d)(3). It also does not apply in connection with employment taxes if the taxpayer is a "repeat offender." IRC Section 6330(h).

F. Judicial Collection - Collection Suits

1. Suit to Reduce the Tax Claim to Judgment

Suit may be brought to reduce the tax claim to judgment, which can extend the period of time to collect the tax. IRC § 7402.

2. Suit to Foreclose the Tax Lien

Suit may be brought for foreclosure of the federal tax lien and to subject the underlying property to payment of the tax. IRC § 7403. This type of suit would be brought where there is specific property to pay the tax. The federal tax liens may be foreclosed against property held by a nominee or alter-ego where the taxpayer is the equitable owner of the property.

3. Levy Enforcement Suit

Suit may be brought to enforce the levy. IRC § 6332.

II. Nominee / Alter-Ego / Transferee Liens and Levies

In order to prevent taxpayers from avoiding their responsibilities several theories have arisen which allow the IRS to follow property into the hands of third parties. The IRM and the case law tend to be a bit confusing because they do not always clearly distinguish amongst which of these theories is being pursued. Because rights in property are determined at the state level, the operative theory must be recognized under state law. *See, e.g., Towe Antique Ford Found. v. IRS*, 999 F.2d 1387 (9th Cir. 1993).

A. Nominee Liens and Levies

Property that is transferred by a taxpayer to a nominee is subject to collection of the taxpayer's liability. *United States v. Reed*, 168 F. Supp.2d 1266 (C. D. Utah 2001). A taxpayer may not, by placing the property in the name of someone else, avoid the reach of the tax lien, since there has not been a true transfer. In such instances, courts have ignored the fact that the property is in another person's name. The nominee lien is distinguishable from the transferee lien (discussed below), which is applicable where there has been a transfer of title *and* a transfer of use and control for inadequate consideration.

Where the taxpayer's property is transferred such that someone else holds title to the property, but the taxpayer continues to enjoy the full use and benefit of the property, the person holding title may be deemed to hold the title as a nominee for the taxpayer, *i.e.*, in name only. In such an instance, the Service may file a nominee lien with respect to the property. The lien filed in the name of the nominee is filed only with respect to the taxpayer's property held in the name of the nominee. The property is subject to the tax liability of the taxpayer, *not* of the nominee. *See Sequoia Property and Equipment Ltd. Ptrship v. United States*, 90 AFTR2d 6728 (E.D. Calif. 2002).

Although there is no statutory authority for nominee liens, the Supreme Court has sanctioned their use. *GM Leasing Corp. v. United States*, 429 U.S. 338 (1977); *see also Wolfe v. United States*, 798 F.2d 1241, 1243 (9th Cir. 1986). An instructive cases is *United States. v. Plastic Electro-Finishing Corp.*, 313 F. Supp. 330 (E.D. N.Y. 1970), *aff'd* 1971 U.S. App. LEXIS 11190 (2nd Cir. 1971). In that case, Planet Plating Company, Inc. transferred all of its business to Plastic Electro-Finishing Corp. The same individuals owned in the same proportions both corporations, both corporations were in the same business, and the individuals performed identical functions. In addition, both businesses were at the same premises and with the same physical plant and dealt with and supplied the needs of the same customers.

The government bears the burden of proving the nominee status by a preponderance of the evidence. *United States v. Reed, supra*. Factors considered in making this determination include the following:

- no consideration or inadequate consideration paid by nominee
- property placed in nominee's name in anticipation of a suit or the occurrence of liabilities while the transferor continues to exercise control over the property
- close relationship between transferor and nominee
- failure to record conveyance
- retention of possession by the transferor

- continued enjoyment of benefits of the property by the transferor

Id; *Sequoia Property and Equipment Ltd. Ptrship v. United States*, 90 AFTR2d 6728. *See also Cheung, Inc. v. United States*, 98 AFTR2d 6551 (W.D. Wash. 2006).

B. Alter-Ego Liens and Levies

Property that is held in the name of an entity that is the alter-ego of the taxpayer may be levied in order to satisfy the tax liabilities of the taxpayer. State law determines whether an alter ego exists to satisfy the tax liability. *Limbaugh v. Dept. Treasury*, 1998 US Dist. LEXIS 13157 (N.D. Calif. 1998). *See also Wolfe v. United States*, 798 F.2d 1241 (9th Cir. 1986).

A judicially-created doctrine in California, alter-ego liability may be applied where:

(1) there exists such unity of interest and ownership, that the personalities of the individual and the corporation or trust are no longer separate, and

(2) an inequitable result would follow if the entity were not disregarded.

See Cohen v. United States, 98-2 USTC ¶ 50,769 (CD Cal. 1998).

An alter-ego is often more difficult for the government to establish than a nominee. Courts have considered factors that include the following:

- substantial ownership of a corporation (trust) and domination of its management,
- insolvency or inadequate capitalization of the corporation (trust),
- failure to observe corporate (trust) formalities,
- absence of regular board meetings,
- nonfunctioning of corporate directors,
- commingling of corporate and noncorporate (trust and nontrust) assets,

- diversion of assets from the corporation (trust) to the detriment of creditors, and
- failure to maintain arm's length relationship between the individual and the corporation (trust).

See, e.g., Cohen v. United States, supra. See, also, Towe Antique Ford Found., supra.

C. Procedural Safeguards

Both the taxpayer and the nominee are entitled to certain notice and appeal opportunities:

1. The Nominee / Alter-Ego

If a nominee or alter-ego lien is filed the Service takes the position that the person identified as the nominee or alter-ego is not entitled to appeal under the CDP procedures, but that the nominee or alter-ego may appeal under the Collection Appeals Program (CAP) provisions after the lien has been filed. Treas. Reg. § 301.6320-1(b)(2 Q&A B-5). IRM 5.12.2.6.4 (2). The nominee or alter-ego cannot challenge the underlying tax liability. The nominee or alter-ego can bring suit to quiet title, or file wrongful levy claim/suit where property is seized.

2. The Taxpayer

The Service also takes the position that if the taxpayer has not previously had an opportunity to appeal under the CDP provisions, then the taxpayer is entitled to notice of the right to a CDP hearing upon the filing of the nominee or alter-ego lien. A nominee lien may not be filed without the written approval of IRS Area Counsel. IRM 5.12.2.6.5 (2/1/2007).

D. Transferee Lien

A transferee lien will be filed where it is established that there has been an *actual* transfer of the property – title and use and control of the property – but the taxpayer received no consideration for the transfer.

Written approval of IRS Area Counsel is required before filing a transferee lien. IRM 12.2.6.8 (3) (March 1, 2004).

> *This requires a determination of fraudulent conveyance or transferee liability. IRM 5.12.2.6.8*

III. Transferee Liability. Transferee liability can arise in equity, at law, or by contract.

A. The elements of transferee liability are generally:

a. Assets must be transferred without consideration, or for inadequate consideration;
b. The transferor must be insolvent at the time of the transfer or be rendered insolvent by the transfer;
c. The IRS must have made a reasonable effort to satisfy the tax liability from the transferor. *Bellin v. Commissioner*, 65 T.C. 676 (1975). The requirements of transferee liability in equity have also been summarized as follows:

1. The taxpayer transferred property to another person;
2. At the time of the transfer and at the time transferee liability is asserted the taxpayer was liable for the tax;
3. The transfer was made after liability for the tax accrued, whether or not the tax was actually assessed at the time of the transfer;
The transfer was made for less than adequate and full consideration, or made with the intent of defrauding creditors;
6. The transferor was insolvent, or the transfer left the transferor insolvent; and
7. The IRS exhausted reasonable efforts to collect the tax from the transferor before proceeding against the transferee. Saltzman, IRS Practice and Procedure, 17-13 (2d Ed.).

The amount of the liability is limited by the value of the assets received from the transferor. *Phillips v. Commissioner*, 283 U.S. 589, 604-605 (1931). Once transferee liability has been established then the IRS may proceed either administratively or judicially to collect the tax. H.R. Rep. No. 356, 69th Cong. 1st. Sess. (1926), 1939-1 (pt 2.) C.B. 361.

A transfer of property does not require a technical transfer of title. *Hatch v. Morsco Holding Co.* 50 F.2d 138 (2d Cir. 1931). A transfer can occur by virtue of a liquidation, Treas. Reg. § 301.6901-1(b*); Coca-Cola Bottling Co. of Tuscon, Inc. v. Commissioner*, 334 F.2d 875, 880 (9rth Cir. 1964), or a stock redemption *Estate of Glass v. Commissioner*, 453 F2d 1375 (5th Cir. 1972).

In *United States v. Bushlow*, 832 F. Supp. 574 (EDNY 1993) the court found a fraudulent conveyance when a son took out a mortgage on property owned by his mother who was liable for unpaid taxes, and the son used the mortgage to improve property belonging to him, the son was held liable for the decrease in value of the property attributable to the mortgage.

Transferee liability is joint and several.

> *Note: the government has taken the position that the liability created under section 6324 (estate and gift tax liability) is a separate nontax liability, and that the liability for the interest extends beyond the value of the property transferred.*

Defenses include the following:

(1) proof that the transferor's tax has been paid

(2) proof that the transferor does not owe the tax

(3) expiration of the statute of limitations

(4) return of the transferred property

(5) in some cases, in transferee liability in equity cases, proof that the Service has not exhausted its remedies against the transferor

B. <u>Transferee Liability under Section 6901</u>

Internal Revenue Code Section 6901 provides for the imposition of transferee liability, allowing for the assessment and collection of liabilities from transferees of taxpayers in the same manner as the underlying taxes. It does not provide for the determination of tax. The transferee's liability may be established at law – *e.g.*, state contract law, or it may be established in equity – pursuant to the state fraudulent conveyance laws. The substantive tax liability must be separately determined. *See Espinosa v. Commissioner*, T.C. Memo 2000-66. Therefore, transferee liability may not be asserted against the transferee unless liability of the transferor for the tax has been determined. *See, e.g., Nason v. Commissioner*, T.C. Memo. 1986-297. (It was premature to establish liability against the transferee of an estate, where valuation remained at issue.)

Section 6901 is a procedural statute for collection – a remedy for recovering through a collection procedure a pre-existing liability – the unpaid taxes of the transferor – where a basis exists for holding the transferee liable under law or equity. Section 6901 does not create or define a substantive liability, it merely provides a remedy for enforcing the existing liability of the transferor. *Commissioner v. Stern*, 357 U.S. 39, 42 (1958); *Bresson v. Commissioner*, 111 T.C. 172, 179, *aff'd* 2000 U.S. App. LEXIS (9th Cir. 2000). The IRS is not bound to proceed under IRC 6901, and may use other collection remedies. *Leighton v. United States, 289 U.S. 506 (1933).*

The transferee may challenge the transferee determination, and the transferee may challenge the underlying liability for the tax. The Commissioner bears the burden of establishing the transferee liability. The Commissioner does not bear the burden of establishing the transferor's tax liability. IRC Section 6902(a). If there has been a judicial determination of the underlying liability, the decision will preclude the transferee's challenge of the actual tax liability.

1. <u>Procedure under IRC Section 6901</u>

(a) Notice of liability is mailed to the last known address (generally); (b) the transferee or fiduciary may file a Petition in the United States Tax Court; (c) liability is assessed if the Commissioner prevails, or if the transferee or fiduciary fails to file a Petition, (d) if liability assessed, collection action taken using the same collection tools as are available in collecting directly from the taxpayer.

2. Tax

Transferee liability under Section 6901 may be pursued only with respect to certain taxes; i.e. (1) against a transferee or fiduciary with respect to tax subject to the deficiency procedures – income tax, estate or gift tax; or (2) against a transferee with respect to all or other taxes of the transferor if the transferee's liability arises out of the liquidation of a partnership or corporation, or out of a corporate reorganization under Section 368(g). IRC § 6901(a).

3. Limitations Period for proceeding under IRC Section 6901

a. Transferee – One year after expiration of the assessment period for the transferor. But if there is a judicial collection proceeding against the transferor, the assessment period expires within one year after the determination in the court proceeding.

b. Transferee of Transferee – One year after expiration of the assessment period for the initial transferee, but no more that three years after expiration of the assessment period for the transferor. But if there is a judicial collection proceeding against the transferor or prior transferee, the assessment period expires within one year after the determination in the court proceeding.

c. Fiduciary – One year after the later of the fiduciary liability or the collection period for the subject tax.

C. Transferee or Fiduciary Liability Suit in District Court

Instead of proceeding under IRC § 6901 suit may be brought in federal district court to assert transferee liability on several different theories including the fraudulent conveyance statutes. In addition to disputing the fraudulent conveyance, the transferee can dispute the underlying tax. However, A prior court decision on the merits of the tax will preclude the transferee from litigating the underlying tax.

1. Tax

Unlike under IRC § 6901, suit can be brought with respect to any type of tax.

2. Statute of Limitations

Suit may be brought within the 10 year collection limitations period under IRC § 6502, even though the state statute of limitations on transferee liability may be shorter. See *United States v. Summerlin*, 310 U.S. 414, 416 (1940). However, there is still some uncertainty in the law as to whether or not a fraudulent conveyance statute such as the Uniform Fraudulent Transfer Act extinguishes the cause of action, and as such is not affected by the rule in *Summerlin*. Cf. *Blesson v. Commissioner*, 111 TC 172 (1998) with *United States v. Vallelos,* 780 F.Supp. 705, 708 (D. HI 1992).

D. Transferee Liability Pursuant to Contract. When two parties agree that one party will be responsible for the other's tax liability that party can be held liable by the IRS. *See e.g. Bellin v. Commissioner*, 65 T.C. 676, 681 (1975).

E. Fraudulent Conveyance

The transfer of real or personal property to a third party, placing property beyond the reach of a creditor or avoiding the creditor's ability to collect, can constitute a fraudulent conveyance. The fraudulent conveyance rules are often used to establish transferee liability.

A conveyance includes the disposition of, or parting with, an asset or interest therein, the payment of money, the granting of a release or a lease, or the creation of a lien or other encumbrance. In *United States v. Bushlow*, 832 F. Supp. 574 (EDNY 1993) the court found a fraudulent conveyance when a son took out a mortgage on property owned by his mother who was liable for unpaid taxes, and the son used the mortgage to improve property belonging to him, the son was held liable for the decrease in value of the property attributable to the mortgage.

1. Suit to Set Aside Fraudulent Conveyance

Suit may be brought by the United States in district court against the transferor and the transferee for the purpose of establishing the transfer as fraudulent, and setting aside the transfer in order to reinstate the property in the hands of the taxpayer/transferor. *See e.g. United States v. Bushlow*, 832 F. Supp. 574 (EDNY 1993); *United States v. Red Stripe*, 792 F. Supp. 1338 (EDNY 1992). (This suit would generally be brought with a suit to foreclose the federal tax lien to collect the property to pay the debt.) The government can proceed under federal or state law. The United States bears the burden of proving that the property was fraudulently transferred.[7]

(a) Federal Law: Federal Debt Collection Procedures Act (FDCPA) - *See* 28 USC § 3301 *et.seq.*
- Actual Fraud 28 USC § 3304(b)
- Constructive Fraud 28 USC § 3304 (a)

The FDCPA provides a federal cause of action to set aside a fraudulent conveyance in federal court.[8]

(b). State Law

Suit may be brought in federal district court to set aside a fraudulent conveyance under state law – the Uniform Fraudulent Transfer Act in California, for example. *See* Cal. Civ. Code § 3439 *et.seq.* California Civil Code Section 3439.04 addresses actual fraud. California Civil Code Section 3439.05 addresses transfers that render the debtor insolvent – *i.e.*, constructive fraud.

(a). Actual Fraud

Cal. Civ. Code § 3439.04[9]

[7] Note that if the lien has priority, the government might simply bring a foreclosure suit or seize the property.

[8] Applicable sections are based upon the Uniform Fraudulent Transfers Act and the earlier Uniform Fraudulent Conveyances Act.

[9] California Civil Code Section 3439.04(a) reads as follows:

There is actual fraud when property is transferred with the intent to hinder, delay or defraud a creditor.[10] Proof of actual fraud is sufficient to set aside a transfer made *before or after* the debt. Actual fraud may be established through circumstantial evidence known as badges of fraud. Badges of fraud include the following:[11]

> **(a)** A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:
>
> **(1)** With actual intent to hinder, delay, or defraud any creditor of the debtor.
>
> **(2)** Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:
>
> **(A)** Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.
>
> **(B)** Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

[10] Not all transfers constitute fraud. A transfer of property by a debtor does not mean there is fraud. *E.g.*, a transfer of property in an attempt to pay the debts is not consistent with fraud unless United States had priority over other paid creditors but was not paid.

[11] California Civil Code Section 3439.04(b) provides for badges of fraud as follows:

> **(b)** In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:
>
> **(1)** Whether the transfer or obligation was to an insider.
>
> **(2)** Whether the debtor retained possession or control of the property transferred after the transfer.
>
> **(3)** Whether the transfer or obligation was disclosed or concealed.
>
> **(4)** Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
>
> **(5)** Whether the transfer was of substantially all the debtor's assets.
>
> **(6)** Whether the debtor absconded.

- transfer lacks consideration
- transferor and transferee are closely related - *e.g.*, family members, shareholder and closely held corporation
- transferor retains the enjoyment, possession and control of the property after the transfer
- transfer concealed
- the transferor was sued or threatened with suit prior to the transfer
- substantially all of transferor's assets transferred
- transferor secretly left jurisdiction
- transferor removed or concealed assets
- transferor insolvent prior to the transfer or became insolvent shortly after the transfer
- the transfer occurred shortly before or after a substantial debt was incurred
- the transferor transferred business' essential assets to a lienholder, who then transferred the assets to an insider[12]

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(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

[12] Additional badges can include:

- inadequate consideration
- transfer not made in the usual course of business, *e.g.*, outside of business hours
- failure to surrender evidence of indebtedness
- failure to record instrument
- extension of credit for long period of time without security
- failure of transferee to properly inventory property received

(b). Constructive Fraud

Cal. Civ. Code § 3439.05[13]

Proof of constructive fraud is sufficient to set aside a transfer made *after* the debt arises. A transfer constitutes constructive fraud when (1) a transferor does not receive reasonably equivalent value in exchange for the transfer; and (2) the transferor was insolvent at the time of the transfer or the transferor was made insolvent by the transfer, or (3) the transfer was made to an insider[14] on account of an antecedent debt, the transferor was insolvent at the time, and the insider had reasonable cause to believe that the transferor was insolvent.[15] *See* 28 USC § 3304(a).

F. Estate and Gift Tax Liens

Internal Revenue Code Sections 6324(a)(2) and 6324(b) impose transferee liability for unpaid estate tax and unpaid gift tax.

1. Transferee Liability for Unpaid Estate Tax – IRC § 6324(a)

- reservation of an interest in transferred property inconsistent with the transfer

[13] California Civil Code Section 3439.05 reads as follows:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

[14] *E.g.*, family member, director or officer of corporation, general partners (or their relatives) of partnership.

[15] Insolvency – in general, if the sum of the transferor's debts exceeds a "fair valuation" of the transferor's assets. There is a presumption that a transferor not paying bills when due is insolvent. *See* 28 USC § 3302.

Section 6324(a)(2) imposes personal liability against the transferee of an estate where the estate failed to pay estate tax when due. In addition to the general lien that may arise, and in addition to any other collection remedies a special lien for estate tax arises automatically under Section 6324(a)(1) upon the death of the decedent and attaches to the property transferred from the estate. Liability is generally limited to the extent of the fair market value of the property received by the transferee at the date of death of the decedent. Liability under IRC Section 6324 covers the transfer of both probate and non-probate property.

2. Transferee Liability for Unpaid Gift Tax – IRC § 6324(b)

Section 6324(b) imposes personal liability against a donee where the donor fails to pay the applicable gift tax liability. In addition to the general lien that may arise, and in addition to any other collection remedies, a special gift tax lien arises automatically under Section 6324(b) upon the making of the gift and attaches to the property transferred. The donee is personally liable for the tax up to the value of the transferred property,.

IV. Fiduciary Liability. The liability of a fiduciary for any tax owed to the United States arises under Section 3713(a) and (b) of Title 31. Liability generally arises where the fiduciary pays other claims before the IRS when the taxpayer is insolvent. The executor of an estate may apply for release from personal liability by written application and payment of the amount of tax determined. IRC Section 6905(a).

V. Recent Cases

United States v. J.W. Todd, 2007-1 USTC P 50,293 (nominee)
United States v. Evseroff, 2007-1 USTC P 50,222 (alter-ego, constructive/actual fraud)