TAX DIVISION JUDGMENT COLLECTION MANUAL
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I. Introduction

Collection of judgments is an essential part of the Division's work. It requires imagination, perseverance, and skill in using federal tax lien and levy law, postjudgment discovery, judicial sale procedures, the Federal Debt Collection Procedures Act (FDCPA), and state judgment execution laws. This Tax Division Judgment Collection Manual sets forth the Tax Division's collection policies, explains the laws authorizing enforced judgment collection, and furnishes suggestions as to how to collect tax judgments. The legal discussions and suggestions are not intended to be exhaustive, but merely to serve as a guide for collection activities. This manual and the exhibits and forms included with it are not intended to create or recognize any legally enforceable right in any person.

A. Timeliness

Collection should be pursued promptly, as well as vigorously, uniformly, and fairly; delay greatly reduces the likelihood of collection. In most cases, the trial attorney should complete initial collection efforts within nine months after entry of judgment. Collection of amounts owed pursuant to a settlement, especially in the early stages, should be monitored closely. If default occurs, appropriate action to enforce collection should be taken promptly.

B. Referral or Retention

After initial collection efforts have been completed, the trial attorney and section chief or assistant chief should decide whether to retain the case or refer it to the IRS (or United States Attorney). In making that decision, an attorney should consider whether the IRS has already attempted to effect collection administratively[1]. If the IRS has referred a suit to reduce assessments to judgment and to foreclose the tax liens on identified property of the taxpayer, it is likely that the IRS has already exhausted its administrative collection efforts. Cases in this category are often prime candidates for referral to the IRS for monitoring as soon as the uncollectibility of the judgment is confirmed. The determination of uncollectibility must be made as of the time the judgment is obtained and should not be based on the IRS's determination made when the case was initially referred (a determination that often is made years earlier than the date of the judgment). The steps necessary to transfer a judgment to the IRS are set forth at § VII.B, *infra*.

In some cases, however, administrative remedies either were not available to, or were not exhausted by, the IRS. For example, liabilities for failure to honor a levy and liabilities under I.R.C. § 3505 are not assessed, and thus, cannot be the subject of a presuit IRS levy. Also, in trust fund recovery penalty refund suits and other partial-payment refund cases involving divisible assessments in which we file counterclaims, the IRS is generally required to defer collection during the pendency of the litigation. The IRS may not have worked these cases thoroughly from a collection standpoint, and many of the

cases may have substantial collection potential.

If initial investigation or postjudgment discovery reveals collection potential, a case should be retained by the Tax Division.

C. Using paralegals

Successful judgment collection will require substantial amounts of the trial attorney's time, but the attorney should seek the assistance of a paralegal for some of the more routine collection tasks, such as initial demand letters and initial collection interrogatories.

D. Reporting activities

As explained in Part VI, *infra*, it is essential that attorneys and paralegals accurately and promptly report their collection and payment activities on TaxDoc, the Division's automated case management system. Additionally, paralegal and attorney time spent on collection matters should be reported on TaxDoc time reports as "Collection Activities" for the designated case. Accurate time and activity reporting enables Division management to track both the status of outstanding judgments and the amount of attorney and paralegal time devoted to judgment collection.

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1. As used in this Manual, the terms "administrative remedies" or "administrative collection" refer to collection actions that the Internal Revenue Code (I.R.C.) authorizes the IRS to take after assessment. Administrative collection may be pursued without first obtaining a judgment in a court (and can also be pursued after entry of judgment). In contrast, authority for collection actions that the Tax Division may take arises from the Government's status as a judgment creditor and is generally based on provisions in the Judicial Code (28 U.S.C.), the Internal Revenue Code, and the Federal Rules of Civil Procedure.

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II. Prejudgment: Protecting the Government's Ability to Collect Taxes

A. Introduction: Preserving the Status Quo

A collection case may take months, if not years, to progress to judgment. In order to prevent dissipation of assets during this time period and preserve the Government's priority against competing claimants, the trial attorney should evaluate the collection potential of a case even before suit is brought, and continue to consider collectibility during all stages of the case prior to obtaining a judgment.

Generally when the IRS requests the Tax Division to initiate a collection suit and the IRS is aware of assets that may be easily dissipated or moved beyond the Government's reach, the IRS will request that the Tax Division initiate litigation to preserve the status quo, including at times obtaining a Temporary Restraining Order (TRO). On occasion, however, a Tax Division trial attorney may learn of the existence of a fraudulent conveyance or the existence of taxpayer's beneficial interest in property where legal title is held by a nominee/transferee/alter ego of the taxpayer that was not known to the IRS. In that case, the trial attorney, after consulting with the section chief, should request the IRS to consider filing a nominee lien and should seek the IRS's views as to whether the Tax Division should file suit to set aside the fraudulent conveyance or determine that certain property is subject to our tax lien because legal title is held by a nominee, transferee, or alter ego of the taxpayer.

B. The Importance of the Notice of Federal Tax Lien

When we are reducing an assessment to judgment, either in a collection suit initiated by the United States as plaintiff or by way of counterclaim in a refund suit involving a divisible assessment, notices of federal tax liens should already have been filed[2]. In many cases where the 10-year statute of limitations is about to expire, the notice of tax lien will need to be refiled. Careful attention should be paid to ensure that the IRS does this. Notices of lien should be carefully reviewed because many notices state that they are self releasing if not refiled by the date shown on the notice. If the lien expires, a new notice of federal lien can be filed, but it may affect the Government's priority against competing liens.

When bringing a suit to set aside a fraudulent conveyance or to determine that real property is held by a nominee or alter ego of the taxpayer, the trial attorney should determine whether the IRS has filed a nominee lien notice, which serves to prevent the title holder from transferring the property beyond the Government's reach and also preserves the Government's priority position. If notices of federal tax lien have not been filed, the attorney should consider requesting the IRS to file them, bearing in mind that the filing will trigger the taxpayer's right to a post filing administrative hearing pursuant to I.R.C. § 6320[3].

C. The Presuit Letter and the Complaint

It is good practice to caution the taxpayer at the earliest opportunity that the United States will be seeking to recover all available costs of collection. As explained more fully below (*see § III.D., infra*), the United States is entitled to recover a ten-percent surcharge on the final judgment if certain conditions are met. Accordingly, if the trial attorney sends the taxpayer a presuit letter prior to bringing a collection suit, the following language about the surcharge should be included:

> We will also seek to recover the 10% surcharge under 28 U.S.C. § 3011 in the event that we are required to use any of the remedies in subchapter B or C of the Federal Debt Collection Procedures Act (28 U.S.C. §§ 3101-3206) to collect this debt.

Simply mentioning the existence of the surcharge provision in a presuit letter may be enough to cause a prospective defendant to pay the underlying debt in full.

Similarly, in drafting complaints and counterclaims seeking money judgments you may want to specify that, if the United States must use any of the remedies in subchapter B or C of the FDCPA, then it will seek the ten-percent surcharge.

D. Lis Pendens

In all suits involving real property, the trial attorney should determine whether it is necessary to file a notice of lis pendens (pending litigation) promptly after filing the complaint. A notice of lis pendens should be filed if the property is not encumbered by a notice of federal tax lien. For example, if the taxpayer has an interest in the property but the property is held in the name of another and there is no nominee lien filed, a notice of lis pendens should be filed. If possible, the notice should be filed on the same day or within one or two days of filing the complaint, to ensure that the notice is filed before the complaint is served on the record owner of the land.

A properly filed notice of lis pendens, like a notice of federal tax lien, places anyone who might consider purchasing or acquiring an interest in property that is the subject of pending litigation on notice of the rights of the seller's adversary, and the purchaser would take the property subject to whatever valid judgment is entered in the litigation[4]. Without a notice of lis pendens (or notice of tax lien or nominee lien), the current record owner may be able to transfer or mortgage the property, possibly giving the transferee or mortgagee a claim prior to that of the Government.

E. Prejudgment Remedies Under the Federal Debt Collection Procedures Act[5]

The Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq*., provides expressly for prejudgment remedies, such as attachment (§ 3102), receivership (§ 3103), garnishment (§ 3104), and

sequestration (§ 3105), which the United States may seek in conjunction with its complaint or at any time after filing a civil action on a claim for a debt. 28 U.S.C. § 3101. The usual grounds for a prejudgment remedy are that, with the effect of hindering, delaying or defrauding the United States, the debtor is about to leave the United States, has or is about to conceal or destroy property, has or is about to convert property into money or securities to the prejudice of the United States, or has evaded service of process or temporarily left the United States. 28 U.S.C. § 3101(b)(1). Another potential basis for obtaining a prejudgment remedy is that the prejudgment remedy is required to obtain in rem jurisdiction within the United States, when the debtor resides outside the United States[6]. Prejudgment remedies require notice to the debtor and any person believed to have possession or control of property subject to the remedy, although the hearing may be postseizure[7].

If the taxes and statutory additions involved in a collection suit exceed $50,000 and the United States applies for a prejudgment remedy, the United States may conduct prejudgment discovery regarding the taxpayer's financial condition in the same manner in which postjudgment discovery is authorized by 28 U.S.C. § 3015(a) and Fed. R. Civ. P. 69. 28 U.S.C. § 3015(b).

F. Injunctions and Receiverships

A broad range of equitable actions is available pursuant to I.R.C. §§ 7402(a) and 7403 to preserve a taxpayer's assets for collection, including an injunction to freeze or turn over assets[8], repatriation of assets[9], a writ of *ne exeat republica* to restrain a taxpayer from leaving the country[10], or appointment of a receiver[11]. Where necessary, the Government can seek a temporary restraining order and preliminary injunction to preserve assets while litigating the merits of a permanent injunction.

G. Preparing for Collection by Obtaining Copies of Tax Returns

At the outset of the litigation, the trial attorney should consider obtaining copies of the taxpayer's income tax returns for all years commencing with the first year in suit (or for some more recent years) to determine potential sources of collection, since by the time the litigation is concluded the IRS may have destroyed some or all of the returns in accordance with its document-retention policy. Income tax returns should routinely be obtained in any case where the liability exceeds $25,000.[12]

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2. A discussion of the federal tax lien, how and when it arises, and the significance of the notice of federal tax lien is contained on § IV.D.1, *infra*.

3. The changes enacted to the Internal Revenue Code as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, make IRS administrative collection more difficult while litigation is pending. In refund litigation concerning divisible assessments (such as trust fund recovery penalty or excise tax assessments), where the taxpayer has made a partial payment and the United States has counterclaimed for the balance, the IRS is prohibited from collecting administratively

during litigation unless (1) the taxpayer waives the restriction, in writing, or (2) the Secretary finds that collection of the tax is in jeopardy. I.R.C. § 6331(i)(3). If the suit involves a nondivisible assessment (*e. g.*, an income tax assessment or a nondivisible penalty), there is no statutory restriction on collection; but as a practical matter, IRS collection will probably be cumbersome because, if the taxpayer utilizes the protections of I.R.C. § 6330, a court will probably be reluctant to permit collection to proceed until judgment has been entered. A better alternative, if the statutory requirements are met, is to utilize the prejudgment remedies of the Federal Debt Collection Procedures Act, *see infra* § II.F.

4. State-law requirements regarding the filing of a notice of lis pendens must be complied with in order to give constructive notice of such an action pending in a United States District Court. 28 U.S.C. § 1964; *see generally*, 51 Am. Jur. 2d. *Lis Pendens*, § 1 *et seq*. (1970 & 1991 Cum. Supp.). An Assistant United States Attorney who handles collection matters or a fellow trial attorney who is familiar with state-law procedures are good sources for ascertaining, without extensive research, the correct form and method of filing a notice of lis pendens for a particular state.

5. For a fuller discussion of the FDCPA, see IV.E.3, *infra*.

6. 28 U.S.C. § 3101(b)(2); *see also* 28 U.S.C. § 3102(b)(3).

7. 28 U.S.C. § 3101(d). *See NLRB v. EDP Med. Computer Sys., Inc*., 6 F.3d 951, 956 (2d Cir. 1993) (approving *ex parte* application for prejudgment garnishment on showing of reasonable cause to believe debtor was about to flee, dispose of assets, or evade service of process).

8. *See United States v. First Nat'l City Bank*, 379 U.S. 378 (1965) (enjoining domestic bank from transferring taxpayer's funds to branch offices within or without the United States).

9. *See, e.g., United States v. McNulty*, 446 F. Supp. 90 (N.D. Cal. 1978) (taxpayer directed to repatriate Irish Sweepstakes winnings and deposit them with clerk of court); *United States v. Greene*, 1984 WL 256 (N.D. Cal. 1984) (asset repatriation appropriate where jeopardy assessment showed substantial tax liability and government's ability to collect tax might otherwise be jeopardized); *United States v. Pozsgay*, 1995 WL 848333 (E.D. Mo. 1995) (default order of asset repatriation entered).

10. *E.g., United States v. Lipper*, 1981 WL 1762 (N.D. Cal.1981) (granting writ). *But see United States v. Shaheen*, 445 F.2d 6 (7th Cir. 1971) (vacating writ where government presented no evidence of liability other than jeopardy assessments, no evidence taxpayer intended to transfer assets abroad, where identified transfers occurred prior to jeopardy assessments, and no showing taxpayer intended to absent himself permanently from the United States); *United States v. Robbins*, 235 F. Supp. 353 (E.D. Ark. 1964) (denying writ).

11. A receiver may be appointed pursuant to § 7402(a) or § 7403 to prevent transfers and concealment of taxpayer's property, see *Florida v. United States*, 285 F.2d 596 (8th Cir. 1960), or the waste or dissipation of taxpayer's assets, *see United States v. Peelle Co*., 224 F.2d 667 (2d Cir. 1955); *Goldfine v. United States*, 300 F.2d 260 (1st Cir. 1962). Where a receiver has been appointed, a court may order the taxpayer to turn assets over to the receiver. *Florida v. United States*, supra (stock certificates); *United*

States v. Ross, 302 F.2d 831 (2d Cir. 1962) (stock of foreign corporation not doing business in the United States).

12. Requests to the IRS for income tax returns may be made in writing or by telephone to IRS Technical Support (formerly SPS), the Area Counsel or the Service Campus (formerly Service Center), followed by a confirming fax or letter. Service Campus personnel have been instructed to call for written confirmation if they have not received it within five days of the telephone request. See Exhibit 1 (form of letter to Service Campus); Exhibit 2 (list of Service Campuses with names and telephone numbers of contacts at each Campus).

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III. Entering Judgment, Stays of Collection, and Obtaining a Judgment Lien

A. What is a Judgment?

A judgment is "any order from which an appeal lies." Fed. R. Civ. P. 54(a). Fed. R. Civ. P. 58 provides that a judgment "shall be set forth on a separate document." A judgment "should be a self-contained document, saying who has won and what relief has been awarded, but omitting the reasons for this disposition, which should appear in the court's opinion."[13] Nevertheless, Rule 58, as amended effective December 1, 2002, provides that a judgment or amended judgment will be considered entered *either* when set forth on a separate document and entered on the docket or – even if not set out on a separate document as required – after 150 days from the docket entry. Rule 58 thus statutorily modifies *United States v. Indrelunas*, 411 U.S. 216 (1973), which had effectively safeguarded a judgment debtor against forfeiture by requiring a judgment to be entered on a separate document, with no stated time limit (although presumably subject to a laches argument). The*Indrelunas* court had held in that case that the final appealable order was the money judgment entered some two years after the jury verdict, and not the civil docket entry "Enter judgment on the verdicts. Jury discharged."

The courts have generally construed the term "final decision" as used in 28 U.S.C. § 1291 as a decision that disposes of all claims of all parties in a lawsuit. A decision that disposes of fewer than all claims or all parties is, as a general rule, a nonappealable interlocutory order. An important exception to this general rule is provided in Fed. R. Civ. P. 54, which permits a court, when multiple claims and/or parties are involved, to direct entry of a final judgment upon an express determination by the court that there is no just reason for delay. Rule 54(b) becomes important if we obtain a favorable decision as to one of several claims or one of several parties. This situation arises commonly in trust fund recovery suits where several responsible persons are joined as defendants on the Government's complaint or counterclaim, and the Government obtains a default judgment or summary judgment against one defendant but has to proceed to trial before obtaining judgment against others. When this happens, a trial attorney should request the court to make a Rule 54(b) determination and direct entry of final judgment. This will allow the Government to proceed without delay to collect the judgment.

Accordingly, unless otherwise specified, the term "judgment" as used in this Manual means either a final decision that disposes of all claims of all parties in a lawsuit, or a 54(b) decision.

B. Form of Judgment

A money judgment in favor of the United States in a tax case should state one figure that is the entire amount to which the United States is entitled, including tax, assessed interest and penalties, collection fees (including lien notice filing fees), and accrued but unassessed interest and penalties. In addition, the language of the judgment should make clear that it covers interest, penalties, and collection

fees that may accrue in the future. A judgment should also state that it includes costs under 28 U.S.C. § 1920, unless none were incurred, although the amount of those costs need not be specified.

Under 28 U.S.C. § 1961(c)(1), interest accrues on tax liabilities, including judgments, at the rate set forth in I.R.C. § 6621. That rate can change quarterly, so tax judgments should not specify a numerical rate of interest. Under I.R.C. § 6622, interest on tax liabilities, including judgments, compounds daily. Interest accrues on the entire unpaid balance of the liability, including interest and penalties.[14]

The trial attorney should contact the IRS and obtain a payout figure including all tax, penalties, interest, and collection fees, for a date close to, but not after, the date on which the judgment will be entered by the court. The judgment should recite that "judgment is entered in favor of the United States and against [taxpayer] for unpaid [type] taxes for the [period of liability] in the amount of $_____, plus interest and other statutory additions accruing from and after [date of payout figure]." Sample forms of judgment are attached as **Exhibits 3, 4, and 5**.

We generally should not set out the terms of a settlement in the judgment. If there is a default on the settlement obligations, we want to execute on the judgment, and the terms of settlement are academic. The exchange of correspondence (offer and acceptance letters) that constitutes the settlement agreement is a contract, which protects the taxpayer. The judgment for the full amount of the liability is to protect the Government in case the taxpayer defaults on obligations under the settlement. When the judgment is for the full amount sought from the taxpayer instead of the lesser amount accepted under the settlement, the judgment also serves to give the taxpayer a strong financial incentive to comply with the terms of the settlement.

A judgment securing installment payments (or collateral agreement payments) under a settlement should be entered immediately, and the abstract of judgment filed promptly to create a judgment lien.

C. The Judgment Should Include an Award of Costs

The United States, like any other litigant, is entitled to an award of costs when it prevails in an action.[15] The district courts use a standard form for the bill of costs (AO 133),[16] which the trial attorney should submit to the clerk.[17] Only those costs enumerated in 28 U.S.C. § 1920 are taxable.[18] Before submitting a bill of costs, the attorney should also check the local rules, which often contain provisions relating to taxation of costs.

- *fees of the clerk* (28 U.S.C. § 1920(1)): The United States as plaintiff may seek as a cost an amount equal to the clerk's filing fee (even though the United States is not required to pay the fee).[19]

- *fees for services of marshal* (28 U.S.C. § 1920(1)): The fees of the United States Marshal for

service of summonses and subpoenas, pursuant to 28 U.S.C. § 1921, are taxable. There is conflicting authority whether the fees of private process servers are taxable.[20]

- *fees of court reporters* (28 U.S.C. § 1920(2)): This includes fees for deposition transcripts and for court transcripts, including any pretrial or post-trial hearings, "necessarily obtained for use in the case," which includes depositions that are introduced into evidence (at trial or in support of a motion for summary judgment), as well as transcripts that may be included in an appellate record, and which may include the cost of the copy as well as the cost of the original transcript.[21] Where the "necessarily obtained for use in the case" standard is met, the prevailing party can also recover costs of depositions used solely for discovery.[22]

- *fees for witnesses* (28 U.S.C. § 1920(3)): Fees for witnesses include all fees payable under 28 U.S. C. § 1821, which include the daily attendance fee (§ 1821(b)), travel expenses (§ 1821(c)), and a subsistence allowance (§ 1821(d)).[23] Fees for expert witnesses above the statutory cap are not allowable.[24]

- *fees for exemplification and copies "necessarily obtained for use in the case"* (28 U.S.C. § 1920 (4)): Courts generally allow photocopying expenses for documents served on or produced to the opposing party (including discovery documents) or documents filed with the court, but not for photocopies for the party's own use.[25] "Exemplification" may also include the costs of photographs and other similar evidence, as well as a computerized multimedia presentation.[26]

- *docket fees under 28 U.S.C. § 1923 (28 U.S.C. § 1920(5))*: These fees are generally de minimis, and include $20 on trial or final hearing; $5 on discontinuance of a civil action; $5 on motion for judgment; and $2.50 for each deposition admitted into evidence.[27]

Costs that are *not* taxable include travel costs for attorneys, computerized litigation expenses such as computer disks and condensed transcripts, computer research, postage, and courier service.[28]

To recover costs, the trial attorney must ensure that all copies of court reporters' bills for transcripts and all witness expense forms are saved.

Because taxable costs become part of the judgment, the trial attorney can use the discovery procedures listed in Rule 69 as well as the judgment collection remedies contained in 28 U.S.C. to assist in collecting them. Where the trial attorney obtains a largely uncollectible judgment, it is unlikely that the Government's costs will be collected. In most full-payment refund cases (and many other cases), however, the costs are likely to be collectible from the losing party.

If fees and costs are awarded to the Government under Rules 11, 16, 26, or 37 during the course of the litigation and have not already been collected, the trial attorney should be sure to include language to that effect in the final judgment for the underlying tax, so that it is clear that the total judgment includes

these sanctions.

As an alternative to the Tax Division collecting costs pursuant to judgment collection procedures, the IRS can–pursuant to I.R.C. § 6673(b)–assess and collect (in the same manner as a tax) sanctions, attorneys' fees, and court costs awarded to the Government in tax cases. To accomplish this, the trial attorney should send the IRS the appropriate form and a certified copy of the judgment. See **Exhibit 6** for a copy of the form to be used for this purpose.

D. Ten-Percent Surcharge for Costs of Collection

Section 3011 of the FDCPA authorizes the United States to recover a surcharge of "10 percent of the amount of the debt" in order "to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt." The § 3011 surcharge is recoverable in any affirmative collection suit brought by the United States, including all tax collection suits, counterclaims, erroneous refund suits, failure-to-honor-levy suits, and I.R.C. § 3505 suits that result in a money judgment. The surcharge is applicable whenever the Government has availed itself of one of the pre- or postjudgment collection tools provided under subchapters B or C of the FDCPA (28 U.S.C. §§ 3101-3206).[29] The mere filing of an abstract of judgment under 28 U.S.C. § 3201, however, is not an "action or proceeding" within the meaning of the § 3011 surcharge provision, and thus, does not entitle the Government to the surcharge. The surcharge is not recoverable if the United States recovers an attorney's fee in connection with enforcement of its claim or if the law governing the claim provides for the recovery of similar costs. 28 U.S.C. § 3011(b).

The surcharge should be mentioned in any presuit letter in a collection case; and in complaints and counterclaims seeking money judgments, the trial attorney should consider pleading that the United States seeks the § 3011 surcharge if required to use any of the remedies in subchapter B or C of the Federal Debt Collection Procedures Act (28 U.S.C. § 3101-3206). *See* §§ II.C., II.D., *supra* (discussing surcharge in presuit letters and complaints/counterclaims).

Because the surcharge is a statutory addition to the underlying liability, the final judgment should not be amended in order to specify that the debtor is liable for it. If an FDCPA collection tool has been used, however, no satisfaction of judgment should be issued unless and until the surcharge has been fully paid or otherwise compromised.

In computing the surcharge, the trial attorney should use 10 percent of the amount of the largest total unpaid judgment liability, including interest and other statutory additions, at any time during the life of the debt after the judgment was entered. The extra ten percent, to the extent it is collected after the full amount of the underlying judgment (including all accrued interest and penalties) has first been collected, should not be paid to the IRS and applied to the delinquent taxpayer's account. Rather, amounts collected for application to the ten-percent surcharge should be paid to the Department of Justice in the same manner as is done with attorneys' fees, sanctions, and other similar amounts collected by the Department.

E. Stays of Collection

1. Automatic Stay of Collection of a Judgment

Fed. R. Civ. P. 62(a) provides, in pertinent part, that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry."[30] Thus, no action may be taken to enforce a money judgment by execution or other proceedings for a period of ten days, commencing on the day judgment is entered as provided in Rule 58.

2. Motions to Stay Collection of a Judgment

Fed. R. Civ. P. 62(b) provides that if a timely motion is filed under the provisions of Rules 50, 52(b), 59 or 60, the court, in its discretion, may also stay execution of–or any proceeding to enforce–a judgment pending the disposition of the motion.[31]

If no stay has been granted by the district court, action to collect the judgment can be taken when the ten-day automatic stay expires, irrespective of the filing of an appeal. If the judgment is satisfied by execution or other post-judgment creditor remedies, the appeal by the judgment debtor is not rendered moot.[32] On the other hand, voluntary satisfaction of a judgment, by either a debtor or a co-debtor, will render an appeal moot.[33]

3. Posting a Bond as a Condition of a Stay

When the ten-day automatic stay expires, Rule 62(d) allows a party appealing a money judgment to prevent enforcement of the judgment by furnishing an appropriate supersedeas bond or other security.[34] The purpose of the supersedeas bond is to preserve the status quo of the parties during appeal, thereby avoiding the risk of restitution if the appeal is successful while, at the same time, protecting the rights of the judgment creditor against any loss resulting from the failure to enforce the judgment during the pendency of an unsuccessful appeal.[35] Although approval of a supersedeas bond precludes further proceedings to enforce the judgment, the other legal consequences of the entry of judgment are not suspended. The bond may be given at or after the time of filing the notice of appeal, and the stay is effective upon court approval of the supersedeas bond.[36] Any application for approval of a supersedeas bond must ordinarily be addressed first to the district court, under 62(d), and, if unsuccessful, then to the appellate court.[37]

As the terms and conditions of the bond will determine the extent of the surety's liability, the bond should clearly provide for payment of the full amount of the judgment, together with estimated costs on appeal and interest in the event the judgment is affirmed, in whole or in part, or if the appeal is

dismissed.[38]

F. Judgment Lien

1. United States District Courts

A judgment lien against a judgment debtor's real property comes into existence only when a certified copy of the abstract of judgment is properly filed.[39] FDCPA Section 3201(a) requires the filing to be made in the same manner as a notice of tax lien is filed under I.R.C. § 6323(f)(1) and (2). Thus, a certified copy of the abstract of judgment should be filed in the appropriate location(s) where real property of the judgment debtor is located. *See* § IV.D.1, *infra*, for discussion of the proper place to file a notice of federal tax lien pursuant to I.R.C. § 6323(f)(1) and (2). An abstract of judgment form, cover letter to the United States Attorney, and instructions are attached as **Exhibit 7**. (In those districts where the United States Attorney's Office is unwilling to assist us, the Tax Division should handle filing the abstract.)

Because a judgment lien, unlike a tax lien, attaches only to real property of the judgment debtor, a judgment lien can be obtained against personal property only by seizing the property under the judgment enforcement procedures. *See* 28 U.S.C. § 3203.

Creation of a judgment lien is especially important in those cases in which the underlying liability of the judgment debtor is not secured by a federal tax lien, for example, liability under I.R.C. §§ 3505 and 6332 (c) and liability for erroneous refunds. A judgment lien is effective for 20 years and, with court approval, may be renewed once for an additional 20 years.[40] 28 U.S.C. § 3201(c).

2. The Court of Federal Claims

Section 2508, 28 U.S.C., provides specifically for the entry of judgments rendered by the Court of Federal Claims in favor of the United States and provides that such judgments shall be enforceable in the same manner as judgments entered by a district court.

3. United States Bankruptcy Courts

In most of the Tax Division's litigation in the bankruptcy courts, we do not obtain a money judgment of the sort that can be collected using the judgment collection procedures contained in the Judicial Code (28 U.S.C.). Most bankruptcy litigation handled by the Tax Division involves disputes as to the amount, relative priority, or dischargeability of the IRS claim. Once these disputes are resolved by a court order or settlement we can generally close our file, since responsibility for monitoring collection of any amounts owed by the bankruptcy debtor (and assessing them if they have not yet been assessed) rests with the IRS.

On occasion, however, we may obtain a money judgment in a bankruptcy court. A money judgment entered by a bankruptcy court is a judgment within the meaning of 28 U.S.C. § 3002(8), since the 28 U. S.C. § 3002(2) definition of a "court" includes a bankruptcy court. Accordingly, the collection tools of the FDCPA (*see* § IV.E.3, *infra*) are available to collect such a judgment. These collection remedies cannot be used, however, if the Bankruptcy Code § 362 automatic stay is still in effect, unless the bankruptcy court lifts the stay at our request pursuant to § 362(d).

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13. Otis v. City of Chicago, 29 F.3d 1159, 1163 (7th Cir. 1994).

14. Sometimes courts mistakenly enter judgment incorporating the interest rate for non-tax judgments in favor of the United States that is set forth at 28 U.S.C. § 1961(a). These mistakes should be corrected immediately, either by calling the judge's scheduling clerk and asking for change, or, if necessary, filing a formal motion.

15. Fed. R. Civ. P. 54(d) provides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs."

16. This form is available on Informs Filler.

17. Any party objecting to the clerk's taxation of costs must object within five days of the clerk's action. Fed. R. Civ. P. 54(d)(1).

18.*Crawford Fitting Co. v. J.T. Gibbons, Inc*., 482 U.S. 437 (1987). In addition to the categories discussed above, § 1920(6) also allows taxation for the compensation of court-appointed experts and interpreters. This category will generally be inapplicable to Tax Division cases, however.

19. *See* 28 U.S.C. § 2412(a)(2).

20. *See* 10 James W. Moore, Moore's Federal Practice § 54.103[3][a] (Matthew Bender 3d ed.), § 54.103 [3][b] nn. 17, 18 (citing cases).

21. *Id*., § 54.103[3][c][i] nn. 29, 30 (depositions introduced into evidence) (citing cases); *Id*., § 54-103[3] [e] (transcripts included in appellate record); *see also Alflex Corp. v. Underwriters Labs., Inc*., 914 F.2d 175 (9th Cir. 1990) (*per curiam*) (original plus copy of deposition taxable).

22. *See*10 Moore, *supra*, § 54.103[3]]c][i] & n. 32 (citing cases).

23. *See* 10 Moore, *supra*, § 54.103[3][c][ii] - [iv] (citing cases).

24. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987).

25. *E.g., Haagen-Dazs Co. v. Double Rainbow Gourmet Ice Creams, Inc.*, 920 F.2d 587 (9th Cir. 1990) (taxing photocopying expenses for discovery documents not offered into evidence); *see also McMillan v. United States*, 891 F. Supp. 408, 415 (W.D. Mich. 1995) (citing cases);10 Moore, *supra,* § 54.103[3]

[d] & n.70 (citing cases). In *Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co.,* 924 F.2d 633, 643 (7th Cir. 1991), the court concluded that a description of photocopying costs was not required to be "so detailed as to make it impossible economically to recover photocopying costs." Some courts also set maximum per-page photocopying charges. *See, e.g., Yasui v. Maui Elec. Co.,* 78 F. Supp. 2d 1124, 1129 (D. Haw. 1999) (maximum charge of $.10 per page).

26. *Maxwell v. Hapag-Lloyd Aktiengesellschaft,* 862 F.2d 767, 770 (9th Cir. 1988) (photographs); *AM Props. v. Town of Chapel Hill,* 202 F. Supp. 2d 451, 454-55 (M.D. N.C. 2002) (same); *see also*10 Moore, *supra,* § 54.103[3][d] & nn. 71-77 (citing cases).

27. *See also* 10 Moore, supra, § 54.103[3][f] (citing cases).

28. *See, e.g., AM Properties v. Town of Chapel Hill,* 202 F. Supp. 2d 451, 455 (M.D.N.C. 2002) (travel expenses of counsel); *Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co.,* 924 F.2d 633 643 (7th Cir. 1991) (computerized litigation costs); *Yasui v. Maui Elec. Co.,* 78 F. Supp. 2d 1124, 1129 (D. Haw. 1999) (*citing Embotelladora Agral Regiomontana v. Sharp Capital, Inc.,* 952 F. Supp. 415 (N. D. Tex. 1997) (computer research, postage, courier costs) *See also 10 Moore, supra,* § 54.103[3][c][i] & nn.41.1 & 41.2 (citing cases).

29. *See, e.g., U.S. v. Sackett,* 114 F.3d 1050 (10th Cir. 1997); *Rendleman v. Shalala,* 864 F. Supp. 1007, 1012-13 (D. Ore. 1994); *United States v. Smith,* 862 F. Supp. 257, 263-64 (D. Hawaii 1994); *United States v. Maldonado,* 867 F. Supp. 1184, 1199 (S.D.N.Y. 1994); *United States v. Mauldin,* 805 F. Supp. 35 (N.D. Ala. 1992).

30. *See generally* 12 Moore's Federal Practice, Ch. 62 (Matthew Bender ed.), (stay pursuant to Fed. R. Civ. P. 62); 20 Moore's, Ch. 308 (stay pursuant to Fed. R. App. P. 8(a)); 11 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure Civil 2d, § 2901 *et seq*. (1995).

31. Fed. R. Civ. P. 62(b)

32. *See Cahill v. New York, N.H. & H.R.R.,* 351 U.S. 183 (1956) (*per curiam*); *In re Latham,* 823 F.2d 108 (5th Cir. 1987).

33. *E.g., Out of Line Sports, Inc. v. Rollerblade, Inc.,* 213 F.3d 500, 502 (10th Cir. 2000) (voluntary payment by debtor); *Schiller v. Penn Central Trans. Co.,* 509 F.2d 263, 266 (6th Cir. 1975) (voluntary payment by codebtor). *See also* 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure, § 3533.2, at 246 & n.36 (2d ed. 1984).

34. Numerous courts have held that a district court maintains discretion to authorize security other than a supersedeas bond. *See, e.g., Olympia Equipment Leasing Co. v. Western Union Tel. Co.,* 786 F.2d 794, 796 (7th Cir. 1986) (supersedeas bond requirement is inappropriate where it would put judgment debtor's other creditors in "undue jeopardy"); *Federal Prescr. Serv., Inc. v. American Pharm. Ass'n,* 636 F.2d 755, 757-58, 760-61 (D.C. Cir. 1980) (district court has "sound discretion" to authorize "partially secured or unsecured stays" in "appropriate cases" where judgment creditor's interest is "not unduly endanger[ed]"). Staying execution of a judgment without requiring any security may constitute an abuse

of discretion, however. *See, e.g., Geddes v. United Fin. Group*, 559 F.2d 557 (9th Cir. 1977) (district court erred in staying execution for one year based on judgment debtors' inability to pay judgment).

35. *Poplar Grove Planting and Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189 (5th Cir. 1979).

36. *See* Fed. R. Civ. P. 62(d).

37. *See* Fed. R. App. P. 8(a).

38. *See* Fed. R. Civ. P. 65.1 for the procedure to enforce the surety's liability should such action be required.

39. 28 U.S.C. § 3201. Before enactment of § 3201, in order to obtain a judgment lien it was necessary to register or record the judgment in accordance with state law applicable to state judgments, pursuant to 28 U.S.C. § 1962, which prior to amendment in 1990 (by Section 3627 of the FDCPA) applied to all judgments obtained in federal district court, including judgments obtained by the United States.

40. Contrast the judgment lien with I.R.C. § 6322, which provides that a federal tax lien is not merged in a judgment and continues until satisfied or rendered unenforceable by reason of lapse of time. *See United States v. Bank of Celina*, 823 F.2d 911 (6th Cir. 1986); *United States v. Overman*, 424 F.2d 1142 (9th Cir. 1970); *United States v. Hodes*, 355 F.2d 746, 749 (2d Cir. 1966), *cert. dismissed*, 386 U.S. 901 (1967).

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IV. Collecting the Judgment

A. An Overview

Collection of a judgment should be pursued promptly, vigorously, uniformly, and fairly. The trial attorney should make every effort to collect as much of the judgment as is feasible within nine months after its entry. Before assuming that enforced collection will be necessary, however, the attorney should explore obtaining voluntary payment.

The trial attorney's work can be summarized:

1. Ask the judgment debtor for payment and work with the debtor, if requested, to ascertain the viability of a payment plan or compromise on the basis of collectibility;

2. If payment is not made or arranged for, attempt to locate the judgment debtor's assets and sources of income;

3. As soon as assets and sources of income are located, evaluate the priority and value of the Government's claim to those assets and the feasibility of collecting future income;

4. Where worthwhile, promptly liquidate assets and collect income by either administrative or judicial action, and apply the proceeds to the judgment;

5. If the above steps are insufficient to satisfy the judgment and it is apparent that further collection is not feasible, transfer the judgment to the IRS for collection and close the Tax Division file.[41]

Once a trial attorney determines that enforced collection will be necessary, the attorney should look to the IRS for assistance in locating assets and income and seizing and liquidating them. At this point, if not done earlier, the taxpayer's income tax returns for at least the five most recent years should be obtained. (*See* § II.G., *supra*, discussing how to request returns.) On request, IRS Technical Support[42] will assign a revenue officer to the collection matter (if one is not already assigned) to act as the Tax Division's field representative. This person can do much leg work, such as conducting an assets investigation, checking land records, preparing and serving IRS levies, and advising of other local developments that bear on collection efforts.

Similarly, the trial attorney may be able to obtain substantial assistance from the United States Attorney's office. Most United States Attorneys' offices have Assistant United States Attorneys and paralegals who specialize in judgment collection. These people are a valuable source of information on matters of local law and custom.

B. Demand for Payment and Instituting Rule 69 Discovery

The first step in the collection process is simply to ask the debtor to pay. A letter demanding payment should be sent ten days after judgment has been entered in favor of the Government in the district court.[43] This is so regardless of whether the taxpayer intends to appeal, unless the taxpayer has obtained a stay of collection.

A sample demand letter is attached as **Exhibit 8**. To the extent feasible, however, demand letters should be adapted and personalized to suit the particular case, in light of the trial attorney's knowledge about the case's collection potential; using a form demand letter is most appropriate where the Division's attorneys have had no previous discussion or contact with the taxpayer's representative or the taxpayer concerning collectibility. The less a demand letter looks like standard boilerplate, which may be safely ignored, the more effective the request for payment will be. Accordingly, if administrative collection is possible, remind the taxpayer of that in the letter. If the taxpayer owns a home that normally would be exempt from creditors' process, remind the taxpayer that state exemption statutes do not bind the United States.[44] If there is a potential for recovering the 28 U.S.C. § 3011 ten-percent surcharge (discussed at § III.D., *infra*), say so.

If you have already ascertained that the taxpayer has no intention of paying anything towards any judgment that may be entered, early service of Rule 69 interrogatories (seeking information as to financial condition, see discussion of Rule 69 discovery, *infra*) will eliminate wasted time and start the running of the taxpayer's 30-day period for answering much sooner. Thus, although not required at this point, you should consider sending Rule 69 interrogatories with the demand letter or shortly after it is sent. Of course, if the debtor satisfies the judgment within the 21-day period as requested in the demand letter the interrogatories need not be answered.

In addition to seeking payment, the demand letter should also, if it has not already been done, either request that the judgment debtor fill out a Form 433-A (Rev. 5-2001) (Collection Information Statement for Wage Earners and Self-Employed Individuals) within 21 days, or be accompanied by Rule 69 interrogatories and a document request seeking financial information. See **Exhibit 9** for a copy of Form 433-A and Privacy Act Statement[45] and **Exhibits 10** and 11 for sample Rule 69 interrogatories and a document request. A complete Form 433-A or Rule 69 interrogatory answers may be the starting point for negotiating a compromise of the judgment on the basis of collectibility.

Since Rule 69 interrogatories can seek the same financial information as is sought by a Form 433-A, the only significant difference between the two is that a debtor cannot be compelled to submit a Form 433-A. In contrast, answers to Rule 69 discovery, like prejudgment discovery, can be compelled pursuant to Fed. R. Civ. P. 37. On balance then, Rule 69 interrogatories are preferable unless there is good reason to believe that a completed Form 433-A will be promptly submitted.

The trial attorney should ensure that any Rule 69 interrogatory answers or completed Form 433-A are made part of the litigation file. Often in the past, collection efforts have been hampered because financial information collected in discovery has been lost or mislaid, particularly in situations where one or more trial attorneys have left the Division before collection efforts have been completed.

Even if the taxpayer has submitted Rule 69 interrogatory answers or a Form 433-A, the attorney should proceed with informal or formal discovery to supplement and verify the information provided, as discussed in the next section.

C. More on Finding Taxpayers' Assets

Ingenuity and diligence are the trial attorney's and paralegal's chief tools in locating a judgment debtor's assets. Judgment debtors who are collectible range from those who are able and willing to pay the judgment immediately, to those who have designed their financial affairs so that if ever a Tax Division trial attorney sought to collect the taxes owed, it would be impossible because all assets would be hidden. Needless to say, the latter type of judgment debtor (and many others) will not submit complete and accurate Rule 69 interrogatory answers or Form 433-A and voluntarily disclose assets. Fortunately, there are sources of information about a debtor's assets which do not depend on the cooperation or honesty of the judgment debtor.

1. Tax Returns

Tax returns provide a good source of information concerning the taxpayer's financial situation. For example, dividend income reported on a return indicates the ownership of stock; interest income indicates the ownership of bank accounts, bonds, or other debt obligations; and deductions for real estate taxes or mortgage interest indicate ownership of real estate. Returns filed over a period of time may also indicate the disappearance of assets and possible fraudulent transfers. For this reason, if copies of tax returns were not obtained at the pre-judgment stage, the paralegal should request the IRS to furnish copies of all federal income tax returns (or copies of tax returns) that were filed for the last five years. (*See* § II.G., *supra*, discussing how to request returns.) In some cases, it may be advisable to obtain copies of the income tax returns for all years beginning with the year to which the liability relates in order to look for a possible fraudulent conveyance. This request should be renewed annually, so that you will have the most current information.

2. Additional Rule 69 Discovery

Rule 69, Fed. R. Civ. P., provides that a judgment creditor may obtain discovery from any person, including the judgment debtor, "in the manner provided in these rules" in aid of collection of a judgment.[46] This means that a judgment creditor may use the full panoply of discovery as provided in Fed. R. Civ. P. 26 through 36 and may enforce a failure to comply with discovery in the manner provided in Rule 37. Moreover, nonparty witnesses may be subpoenaed to attend a deposition (and produce documents) pursuant to Rule 45.

The ability to conduct (and, if necessary, compel) discovery in aid of collection pursuant to Rule 69 is a key collection tool that is not available to the IRS when it is pursuing administrative collection efforts.[47] Accordingly, as soon as it is apparent that a judgment debtor does not intend to satisfy a judgment voluntarily, a trial attorney should begin to plan how to use the available discovery tools to locate income and assets. In most cases, interrogatories and requests for production of documents to the judgment debtor are the recommended first step.[48] Nevertheless, if the trial attorney knows or suspects that the debtor has certain assets or income, the Rule 69 interrogatories should be tailored to fit the circumstances of the case.

If the Rule 69 interrogatories are not answered within the 30 days allowed by Rule 33, the trial attorney should promptly request answers and, if necessary, follow up with a motion to compel answers, since ignoring a failure to answer sends a message to the debtor that the Government is not serious about collecting the debt. (*See* **Exhibit 12** for a sample motion to compel responses to Rule 69 discovery and **Exhibit 13** for a sample discussion of authorities in support of a motion to compel and in response to various objections to discovery, including 5th Amendment claims.)

Most important, once the interrogatory answers are received, the trial attorney should promptly review them and determine whether any income or assets are identified that might be a possible source of collection. The trial attorney should also review the interrogatory answers with a view towards pursuing additional discovery, such as depositions and document requests.

As in pretrial discovery, depositions are one of the most effective postjudgment discovery tools. A Rule 69 deposition of the debtor (and possibly third parties) is advisable if:

(1) the amount of the judgment exceeds $100,000; or

(2) the trial attorney suspects that the debtor has the ability to satisfy the judgment; or

(3) the attorney suspects that assets or income have been or are being concealed or fraudulently transferred.

A document request should be sent before the deposition notice in time for the attorney to review the documents before the deposition. Among the documents ordinarily requested are the debtor's bank statements, loan applications, documents evidencing consideration allegedly furnished for property transferred by the debtor, and documents indicating amounts held in IRAs, pension plans, mutual funds, and the like. In many cases, depositions of (or document subpoenas issued to) the debtor's employer, bank(s), and possible transferees or nominee owners of assets are also advisable.[49]

3. Fraudulent Conveyances & Nominee Ownership

The paralegal and trial attorney should be alert to look for assets which may have been fraudulently conveyed by the taxpayer or which are held in the name of a nominee. When the IRS requests institution of a suit to reduce an assessment to judgment, it will generally authorize whatever other litigation is then known to be necessary, such as a foreclosure of a lien on realty, or a suit to satisfy a fraudulent conveyance, or a nominee suit. Sometimes, however, even when the IRS has been vigorously pursuing collection, the IRS may overlook a fraudulent conveyance, or property held in the name of a nominee. In cases involving counterclaims, the IRS may never have investigated the possibility of a fraudulent conveyance, and it is the trial attorney's responsibility (assisted, of course, by the IRS) to determine whether any occurred.

For purposes of determining whether a debtor's transfer of an asset rendered him insolvent, a liability accrues when it is incurred. For example, a liability for income taxes for the year 2003 accrues by the end of 2003, even though it may not be assessed until much later.[50]

The federal fraudulent conveyance statute is based upon the Uniform Fraudulent Transfer Act, but it contains relatively short statutes of limitations, 28 U.S.C. § 3304, generally six years after the transfer (plus, for intent to defraud, two years after the transfer reasonably should have been discovered). These statutes of limitation will be troublesome in a tax context because the legislation does not include any suspension during periods in which a criminal investigation or Tax Court or bankruptcy litigation is pending. Accordingly, a fraudulent conveyance case brought by the Tax Division will normally be based on state law, instead of the federal statute. While the federal legislation is the exclusive remedy for most Government claims, state remedies are still available in aid of collection of taxes, 28 U.S.C. § 3003(b)(1), and state statutes of limitation do not bind the United States.[51] A state law statute of limitations extinguishing a claim after a certain period of time likewise is not binding on the United States.[52]

4. More on Nominees, Alter Egos and Successors

Trial attorneys seeking to locate and attach a judgment debtor's assets may need to determine whether such assets are being held by the debtor's nominees, alter egos, or successors. And where such doctrines can be employed, the trial attorney will have to determine whether separate proceedings may have to be commenced to enforce existing judgments (or tax liens). A discussion of these three theories and some of the major cases is set forth in **Exhibit 14**.

5. Using Computerized Database Services to Locate Debtors' Assets

Once the judgment has been perfected (i.e., an Abstract of Judgment is filed with the appropriate state office), and before formal discovery is served on the judgment debtor, trial attorneys should avail themselves of various electronic databases containing information about a judgment debtor's assets. This may assist trial attorneys in framing Fed. R. Civ. P. Rule 69 discovery (i.e., document requests, interrogatories, and/or deposition questions) to the judgment debtor, and may provide important leads about the debtor's assets as well. For assistance in electronic searches, please consult with The Tax

Division librarian at 202-307-6518 or 616-5564, who has a wealth of knowledge, information, and experience.

A summary of some electronic sources follows:

LEXIS/NEXIS is an excellent source for doing asset searches. There are numerous databases. For example, LEXIS/NEXIS has databases that include people, business and asset locators, public records (liens and judgments), company records, financial reports about companies (e.g., Experian Business Reports), filings with numerous Department of States and with the Securities and Exchange Commission.[53] There are also motor vehicle databases. LEXIS/NEXIS databases, however, do not cover every state or every category. One catchall database that is particularly helpful is SmartLinx. When researching individual judgment debtors, submit the name of a judgment debtor in the LEXIS/NEXIS library and file entitled " SmartLinx Person Summary Reports " (additional information such as an address and/or social security number can also be added) to obtain descriptive reports which include name variations, current and prior addresses, telephone numbers, a summary of assets, and "attributes."[54] The search results may also show multiple addresses for the judgment debtor in more than one state. Information pertaining to the judgment debtor's real property may include the price the debtor paid (or received) for the property, the legal description of the property, the current assessed value of the property, and other details about the property. To search for business information, the library and file entitled SmartLinx Business Summary Reports can be used to obtain similar information.

WESTLAW also provides another source for doing asset searches; but it, too, does not include information from all 50 states. WESTLAW and LEXIS/NEXIS databases are similar but not identical. Locating a judgment debtor or witnesses having relevant information can be found by consulting the People Finder Name Tracker , People Finder Social Security Alert , and People Finder Skip Tracer databases. Motor Vehicle records can be found on both LEXIS/NEXIS and WESTLAW.

There are many other databases available through the Department of Justice Library system. Please consult the guide Finding Information on U.S. Companies that is provided through the Virtual Library. The table of contents includes a description of print sources, online sources, mostly free Internet sources, and search engines.

Other Electronic Databases:

Dun & Bradstreet Business Information Reports (currently only available through the Tax Division's Reference Librarian). A "D&B" report provides information and analysis in order to evaluate a firm's operations and profitability. This is where a credit rating for a company may be obtained.

Powerfinder Government & Public Agency Edition CD-ROM (located in the Tax Library in Room 7607, JCB). Provides business and personal names, addresses, and telephone numbers.

Dialog (available through the Tax Division's Reference Librarian). Dialog is a network which provides access to a myriad of academic, business, technical and scientific, and trade databases. Some databases are bibliographic and others provide full-text documents.

DOJ Virtual Library Although many of the anticipated searches may involve individuals, the Justice Librarians have put together a number of guides that can assist you with public records research. Use the Guide to Corporation Records to access Department of State databases (often more up-to-date and accurate than Westlaw and Lexis). Some states even provide the full text of annual reports and other corporate documents online. Link to Web Pacer and electronic filing databases for federal courts through the Guide to Court Resources. Many counties provide extensive property databases for free through the Web. These and other state and local public records resources can be accessed through the State Legal Resource Center, Library Links Page to Public Records. The DOJ Virtual Library link to Directories dedicated to finding a person or business may also be useful.

Please note that as with any free and private company Web site, the information obtained is neither warranted nor obtained over a secure link.

Search Engines on the Internet The DOJ Virtual Library provides a guide entitled Guide to Web Searching Tools. Access to search engines such as Google, Altavista, subject directories such as Yahoo, and many more can be easily accessed here.

A discussion by Lynn Peterson entitled *Super Searchers Go to the Source: Lynn Peterson: Public Records "To the Ends of the Earth,"* Part 1 and Part 2 provides the researcher with an in-depth understanding of the subject.

Trial attorneys may also wish to consult with the Financial Litigation Units ("FLU") of the US Attorneys Office in the districts where they have obtained judgments. The FLUs may subscribe to databases such as CDB InfoTech n/k/a ChoicePoint, and FLU's can obtain credit reports regarding judgment debtors. Also, many of the FLUs have access to the major credit reporting agencies, such as TRW, Trans Union, and Equifax. These can give you current addresses, employment information, and credit scoring, and can often help to locate banks with which a debtor does business. The Department of Justice librarians can now conduct ChoicePoint searches. Please contact The Tax Division librarian at 202 307-6518 or 616-5564 for details.

6. Other Sources of Information on Collecting Judgments

Attached as **Exhibit 15** is a bibliography of books and articles on collecting judgments and locating assets offshore. Most of these materials can be obtained through the Tax Division library.

D. Evaluating Collection Potential

Once the trial attorney finds assets, the next step is to ascertain whether they are available for collection. Some assets or income may be exempt from collection or subject to the prior claims of other creditors.

In evaluating collection potential you must take into account, among other things:

(1) the priority of the Government's underlying federal tax lien, and whether a notice of federal tax lien has been timely filed and remains perfected;

(2) the protection afforded by the judgment lien;

(3) the effect, if any, of state exemption statutes; and

(4) the extent to which the tax claims covered by the judgment will survive bankruptcy.

1. Priority: The Federal Tax Lien

In collecting a judgment for taxes, the trial attorney can rely upon either the judgment lien or the federal tax lien, or both.[55] Since the federal tax lien will usually pre-date the judgment lien, normally the United States will rely upon the federal tax lien.[56] Thus, the trial attorney must be familiar with when a federal tax lien arises and the filing requirements relative to federal tax liens.

The first step in the creation of a federal tax lien involves the making of an assessment. An assessment of a federal tax is made by recording the liability of the taxpayer in the office of the Secretary of the Treasury. I.R.C. § 6203. Pursuant to the Treasury Regulations, an assessment is made by an assessment officer signing the summary record of assessment. Treas. Reg. § 301.6203-1. Section 6303 of the I.R.C. provides that as soon as practicable, and within 60 days after the making of an assessment, notice of the assessment and demand for payment of the assessment must be given to the taxpayer.[57]

If the taxpayer neglects or refuses to pay the tax after demand, then, pursuant to I.R.C. §§ 6321 and 6322, a federal tax lien comes into existence and attaches to all property and rights to property belonging to the taxpayer. The tax lien dates from the date of assessment, and continues until the tax liability has been satisfied or becomes unenforceable by reason of lapse of time.[58] The federal tax lien attaches not only to all property or rights to property belonging to the taxpayer on the date the tax lien arose, but also attaches to all after-acquired property or rights to property.[59]

State law determines the nature of the interest the taxpayer has in property, but once it has been determined that the taxpayer has an interest in property under state law, federal law determines the priority of competing liens asserted against the taxpayer's property.[60]

Except as provided under I.R.C. § 6323, in order for a state-created lien to compete against a federal tax lien, the state-created lien must be "choate." A state-created lien is choate when the identity of the lienor, the property subject to the lien, and the amount of the lien have all been established.[61] Once a state-created lien has become choate, then the priority between the state-created lien and the federal tax lien is determined by the principle that the first in time is the first in right.[62]

With respect to certain interests listed in I.R.C. § 6323(a), the federal tax lien imposed by § 6321 is not valid until such time as a notice of federal tax lien has been filed. The interests are those of a purchaser, holder of a security interest, mechanic's lienor, and judgment lien creditor. Once a notice of federal tax lien has been filed, the priority of the listed interest with respect to the federal tax lien is determined by the same principle of "first in time is first in right." In deciding whether the federal tax lien is first in time, however, you look to the date the notice of federal tax lien was filed, not the date the federal tax lien arose under § 6322.[63]

The notice of federal tax lien is filed in the one office within the state (or the county or other governmental subdivision) designated by the laws of that state where the property is situated.[64] I.R.C. § 6323(f)(1)(A). Real property is deemed to be situated at the place of its physical location.[65] I.R.C. § 6323 (f)(2)(A). Personal property is deemed to be situated at the residence of the taxpayer at the time the notice of federal tax lien is filed. I.R.C. § 6323(f)(2)(B). The residence of a corporation or partnership is deemed to be the place at which their principal executive office is located. *Id*. The residence of a taxpayer whose residence is outside of the United States is deemed to be the District of Columbia. *Id*. If the state in which the property is situated fails to designate the one office required by § 6323(f)(1)(A), then the notice of federal tax lien must be filed in the office of the clerk for the United States District Court for the judicial district in which the property is located. I.R.C. § 6323(f)(1)(B).

In order for the notice of federal tax lien to remain effective, it must be refiled during the refiling period specified in I.R.C. § 6323(g)(3).[66] The first refiling period is the one-year period ending 30 days after the expiration of ten years after the date of the assessment of the tax. The second refiling period, as well as all other subsequent refiling periods, is the one-year period ending with the expiration of ten years after the close of the preceding required refiling period.

Thus, if a federal tax assessment is made on March 1, 1989, the first refiling period for any filed notice of federal tax lien with respect to that tax would be April 1, 1998, through March 31, 1999. The second refiling period would be from April 1, 2008, through March 31, 2009. A timely refiled notice of federal tax lien is effective as of the date the original notice of federal tax lien to which the refiled notice relates was effective. Treas. Reg. § 301.6323(g)-1(a)(2). If the notice of federal tax lien is filed after the required refiling period, then the notice of federal tax lien will only be effective from the date of the subsequent refiling.

2. Priority: The Judgment Lien

As previously noted, with most tax judgments the underlying federal tax lien will give the Government a better priority position than will the judgment lien. Nevertheless, the trial attorney should ensure that the United States obtains a judgment lien on the taxpayer's real property by filing an abstract of judgment in case the IRS fails to refile the notice of federal tax lien. Creation of a judgment lien is especially important in those cases in which the underlying liability of the judgment debtor to the United States is not secured by a federal tax lien, e.g., liability under I.R.C. §§ 3505 and 6332(c) and erroneous refunds.

3. Effect, if any, of State Exemption Statutes

State laws and interpretations are not determinative regarding property rights and the reach of the federal tax lien. State-law exemptions for homesteads and tenancies by the entirety do not prevent the tax lien from attaching to such property and the Government foreclosing such lien.[67] Labels that state laws place on property rights are irrelevant to the federal question of which bundle of rights constitute property that may be attached by a federal tax lien.[68]

At the election of a debtor under 28 U.S.C. § 3014, Government claims generally will be subject to the various exemptions from creditor's process enacted in each state or to the federal exemptions specified in § 522(d) of the Bankruptcy Code.[69] With respect to federal taxes, however, the only exemptions generally available (outside of bankruptcy) are those provided under I.R.C. § 6334. This is particularly significant in jurisdictions that have a generous homestead provision. While property listed in § 6334 is exempt from levy, such property is not exempt from the federal tax lien that is created at the time of assessment.[70]

Some of our collection cases do not involve an assessed tax so that a tax lien does not exist and the IRS does not have the power to levy. Examples are suits to enforce levies, actions under I.R.C. § 3505 (relating to derivative liability for withholding taxes), actions to recover erroneous refunds, and tortious conversion-of-lien suits. In attempting to effect collection of judgments in such cases, the state exemption rules may apply pursuant to 28 U.S.C. § 3014. The state exemption provisions likewise will apply to the use of judgment enforcement procedures to collect costs, sanctions, and attorney's fees. An alternative course of action for avoiding the state exemption rules when collecting costs, sanctions, and attorney's fees is to request their assessment and collection by the IRS under I.R.C. § 6673(b). Collection of these amounts by levy is not subject to state exemptions, but only to the I.R.C. § 6334 exemptions.

4. Extent of Survival of Tax Claims After Bankruptcy

Another important consideration is the possibility that the taxpayer may file a bankruptcy petition. Counsel for taxpayers frequently threaten to file bankruptcy when attempting to negotiate a settlement of a tax debt. A mere threat of bankruptcy should not cause the Tax Division to waive collection of amounts that would be discharged in bankruptcy. Nonetheless, the degree to which a tax claim would be

satisfied or discharged in bankruptcy is a relevant consideration in evaluating a settlement proposal.

Whether certain taxes of an individual are dischargeable in a bankruptcy proceeding sometimes depends upon whether the proceeding is one under Chapter 7, 11, 12, or 13. Section 523(a) of the Bankruptcy Code provides exceptions to the normal discharge provisions with respect to an individual in a case under Chapter 7, 11, or 12.[71] Pursuant to § 523(a), a tax claim which is entitled to priority under § 507(a)(8) of the Bankruptcy Code will not be discharged in a proceeding under Chapter 7, 11, or 12.[72] Further, tax claims will not be discharged in an individual's case under Chapter 7, 11, or 12 if the claims relate to a tax debt with respect to which a return, if required, was not filed or was filed late and two years or less before the date of the filing of the bankruptcy petition. Section 523(a) also provides for the nondischarge of certain tax penalties. Also, certain tax liabilities will be nondischargeable under § 523(a)(1)(C).

A discharge granted under § 1328(a) of the Bankruptcy Code is different. A debtor who receives a discharge under § 1328(a) is discharged, with certain exceptions not applicable to this discussion, from all debts provided for by the plan or disallowed under § 502. Thus, trust fund recovery penalty liabilities have been held to be discharged in a Chapter 13 proceeding when the plan provided for payment of all allowed tax liabilities but–because the IRS's proof of claim had not been timely filed–the liability did not in fact have to be paid.[73]

A corporation is not entitled to a discharge in a Chapter 7 proceeding. Bankruptcy Code § 727(a)(1). A corporation will also not be able to discharge its tax liabilities in a Chapter 11 proceeding if the plan provides for the liquidation of all or substantially all of the property of the estate and the corporation does not engage in business after consummation of the plan of reorganization. Bankruptcy Code § 1141(d)(3). If a corporation files a Chapter 12 proceeding, Bankruptcy Code § 1228(a)(2) provides for the nondischarge of any debt of the kind specified in § 523(a).

E. Liquidating Assets

There are a number of different techniques the trial attorney can employ to convert assets in the hands of the taxpayer or his associates to cash in the coffers of the United States.

1. Administrative Collection by the IRS

One effective collection technique that the trial attorney should always attempt to employ is the IRS administrative levy. See I.R.C. § 6331. Current law regarding the use of levies requires the IRS to issue the taxpayer a notice of the proposed levy and the taxpayer's rights to a hearing with the IRS Office of Appeals. I.R.C. § 6330(a). The taxpayer then has thirty days to request the hearing. If the eventual determination by the IRS Office of Appeals is adverse to his position, the taxpayer can then file an action with either the U.S. Tax Court or a district court, depending on the type of tax liability the IRS seeks to collect. I.R.C. § 6330(d). The IRS is prohibited from actually issuing the levy and seizing the

property unless and until the IRS Office of Appeals proceeding, and any subsequent court proceeding, are first resolved in its favor.

If the trial attorney can identify income or assets in the taxpayer's name, he or she should always ask the IRS to issue the thirty-day notice. If the taxpayer does not file the appeal, the levy can be issued. If the taxpayer does file an appeal, other means of collection can be employed. If the taxpayer receives salary or wages, the garnishment procedures of FDCPA § 3105 can be employed. If an asset can be located, a judicial foreclosure proceeding can be initiated.

2. Sale of Property

There are several methods of selling property for application of the proceeds to tax liabilities. Under the authority of I.R.C. §§ 7402, 7403, the court may appoint a receiver to arrange for the sale of real or personal property, or to liquidate the assets of a corporation, pay its debts, and distribute any remainder on equity. In addition, property can be sold privately or at auction under 28 U.S.C. §§ 2001, 2002, and 2004. The court can also order that property be sold by the IRS Property Appraisal/ Liquidation Specialist (PALS). An execution sale pursuant to 28 U.S.C. § 3203 is available in all cases in which the United States obtains a money judgment: however, these are rarely used in the Division. Finally, either with or without filing a court action seeking judicial foreclosure, we can agree to let the property owner sell the property within a specified time period and subject to our approval of the sale price.

Consultation with a supervisor may be necessary in order to determine the method of sale most appropriate in each case. Using a local real estate broker appointed as a receiver is likely to be the best way to maximize the recovery from real property. In some instances, however, it may be necessary to complete a sale relatively quickly. A public auction sale by the U.S. Marshal or IRS PALS may be appropriate in those circumstances.

A district court has broad powers under I.R.C. § 7402(a) to issue orders to ensure the orderly sale of property. For example, the court can require the judgment debtor to refrain from damaging the property, from filing deeds, liens or other documents, or taking any other action that might tend to interfere with the sale. It is a good idea to request such restrictions in all orders of sale. They are particularly useful in cases where one might anticipate the debtor will attempt to hinder the sale. Attached as **Exhibits 16** and **17** are a motion for order of sale and a proposed order for sale. The court can also order the current resident to vacate the property, and such an order should be entered in every case in which the current resident may not vacate voluntarily.

a. Receivers

Having a receiver appointed to sell property pursuant to I.R.C. § 7402(a) and 7403(d) is the method of sale that is most likely to yield the highest sale price. Section 7402(a) gives a district court broad authority to enter any order necessary or appropriate for the enforcement of the internal revenue

laws, while § 7403(d) specifically provides for the appointment of a receiver to enforce the federal tax lien, including, upon certification by the IRS that it is in the public interest, the appointment of a receiver with all the powers of a receiver in equity. This certification is necessary if the receiver is to take over an ongoing business or rental real property, but not if the receiver is merely taking over vacant real property. A sample of such a certification is attached as **Exhibit 18**.

Because most real estate brokers are always eager to be allowed to list new property in order to gain the accompanying sales commission, the trial attorney should have no problem finding a reputable local real estate broker willing to serve as receiver. The broker should be compensated at the usual local rate for real estate commissions. The broker should be required to pay out of his pocket for utilities, maintenance, locksmith fees, trash removal, cleaning, and any other appropriate expenses associated with the property that are incurred between the date of his appointment and the closing of the sale. He will be reimbursed for those costs at closing. A sample Motion for Appointment of Receiver and Order Appointing Receiver are attached as **Exhibit 19** and **19A**.

Because only the court can confirm a sale to a particular buyer at a specific price, neither the receiver nor the trial attorney should sign a real estate sales contract, if one is submitted by a potential buyer. Rather, once the trial attorney and the section chief, after consulting with the receiver, believe that a particular offer is the best one likely to be received, a letter should be sent to the offeror or his representative stating that we will ask the court to confirm the sale on the terms set forth in the offer. A sample of such a letter is attached as **Exhibit 20**. A sample Motion for Order of Confirmation and Order Confirming Sale are attached as **Exhibit 21** and **Exhibit 21A**. The order of confirmation should also include a Receiver's Deed, a sample of which is attached as **Exhibit 22**.

Once the sale has been confirmed and a closing date has been set, the trial attorney should determine how the proceeds of the sale should be distributed and submit a Motion for Order of Distribution and a proposed Order of Distribution, samples of which are attached as **Exhibit 23** and **Exhibit 23A**. The trial attorney should obtain a summary of the expenses incurred by the receiver and compute his fee. If there are any liens with priority over our federal tax liens, including local real estate taxes, the trial attorney should obtain payoff figures for them as of the closing date. The title company that handles the closing will also likely have some relatively small fees, such as the cost of title insurance. If the amounts to be distributed are known in advance, the motions and orders for confirmation and distribution can be combined.

In selling a residence that is not being rented out, it will generally be necessary for the trial attorney to get the current resident to vacate the property. Potential buyers will be reluctant to pay full price if they have any doubts as to whether they will get possession of the property at closing. It will also be easier for the broker to maintain and show the property if it is vacant. If the resident cannot be persuaded to move out voluntarily, it will be necessary to obtain an order to vacate, which should include a provision for the U.S. Marshals Service to enforce the order if necessary. A sample Motion for Order to Vacate and Order to Vacate Real Property are attached as **Exhibit 24** and **Exhibit 24A**.

A receiver can also be used in a situation where we are foreclosing the federal tax lien against a taxpayer's stock in a closely-held corporation. If the tax lien has attached to a majority of the stock, a general equity receiver can be appointed to take over control of the corporation, collect its income, and liquidate its assets, satisfy its debts, and distribute the net proceeds to the United States and the other shareholders in the proportion of stock ownership. A reputable local attorney experienced in business transactions will probably be willing to serve as receiver if an appropriate commission can be negotiated.

b. Auctions and Private Sales Under 28 U.S.C. §§ 2001, 2002, and 2004

Section 2001(a), 28 U.S.C., provides the procedures for a public auction sale of real property, while § 2001(b) specifies the procedures for a private sale. Section 2001(a) provides that a public sale is to be conducted at the courthouse of the county in which the greater part of the property is located, or upon the premises of the property itself. Section 2002 provides that notice of the public sale must be published once a week for at least four weeks in a newspaper regularly issued and of general circulation in the area where the realty is located. Section 2004 deals with the sale of personal property, providing that it shall be sold in the same manner as real property is sold under § 2001. While historically the Tax Division has used the U.S. Marshal's Service to conduct public auction sales, the statutes allow the auction to be conducted by other persons as well.

In a public sale under these provisions, the judge enters an "Order of Sale" directing the auction sale of a specific piece of property, at a specific time and place, under specified terms and conditions, and with notice by newspaper publication. The trial attorney should also probably request the court to establish a minimum bid price for the property being sold. The terms and conditions of sale are discretionary with the court. If the tax liens are superior to those of other creditors, the IRS may make a bid for the property. This requires special authorization, which may take some time to obtain. Judicial confirmation of the auction sale is required. Because notice by publication is not as effective as the multiple listing service used by real estate brokers, the sale of residential real property at public auction is not likely to yield as high a sales price as using a local real estate broker as a receiver.

Property can also be sold privately without an auction under 28 U.S.C. Section 2001(b) sets forth notice, publication, and appraisal requirements which must be satisfied, however, before a private sale can be confirmed by the court. The expense and administrative burden of these procedures weigh against the use of this method. To avoid the burden and expense of these procedures, however, the parties can stipulate to a private sale waiving the notice, publication, and appraisal requirements of § 2001(b). While not specifically authorized by statute, such a procedure is in essence a settlement of the action that is agreed to by all parties.

c. PALS

Some attorneys have had the court order property sold pursuant to 28 U.S.C. §§ 2001, 2002, or 2004 by the IRS Property Appraisal/Liquidation Specialist (PALS). A PALS is an IRS employee who specializes in the appraisal, marketing, and sale of both real and personal property. The trial attorney can

obtain the name and phone number of the local PALS through Technical Support. Normally, a PALS sells property that was administratively seized by IRS. A PALS can also be used to sell real or personal property as part of a judicial proceeding to collect on a judgment, including meeting the advertising and other requirements of 28 U.S.C. §§2001, 2002. A PALS can also assist in determining a minimum bid for an auction sale by the U.S. Marshal. Unlike a receiver, a PALS will not charge a commission, and advertising and sale costs should come out of the IRS PALS budget rather than from the sales proceeds. As a generalist that may not have unique knowledge of the market for the particular type of property being sold, however, a PALS might not be able to get as high a sales price as a receiver with specialized knowledgeable of the market would. Use of a PALS might be particularly appropriate for selling tangible personal property, such as vehicles, works of art, or a coin collection.

d. Selling Securities

Two federal government agencies (listed below) can assist in selling stocks, bonds, notes, and other securities that a trial attorney obtains through enforced collection of a judgment. These agencies have contracts with brokers that can sell the securities.

United States Department of Treasury
Bureau of the Public Debt
Office of Public Debt Accounting
Hintgen Building, Room 114
200 Third Street
Parkersburg, West Virginia 26101-5312
contact: Veronica Lowther
Financial Accounting Branch Manager
Telephone: (304) 480-5161
website address: www.publicdebt.treas.gov

United States Marshal Service Headquarters
Assets Forfeiture Office
Suite 402, CS3
3610 Pennsy Drive
Landover, Maryland 20785
contact: Leonard Briskman
Deputy Chief for Business Management
Telephone: (202) 305-9414

The trial attorney should fax these three items to the agency: (1) a copy of the certificate; (2) a certified copy of any court order or writ showing that the Government has a right to possess it; and (3) a certified copy of any court order permitting the Government to sell it. The agency will likely have the documents reviewed by its legal staff to determine if there will be any problem selling the security.

Once the agency agrees to sell the security, the trial attorney must arrange to deliver the security to the agency. Once the security is sold, the funds should be wired to Agency Location Code 15030001. The trial attorney should also request that the following information be included with the code so that the deposit can be identified as one belonging to the Tax Division: TAX CMN (number).

3. The Federal Debt Collection Procedures Act

The Federal Debt Collection Procedures Act of 1990, 28 U.S.C. §§ 3001 through 3308, is an important tool for collecting civil judgments in favor of the United States. An understanding of the Act

and its relationship to tax liens and levies, judicial sales, and state judgment execution procedures is essential to the effective collection of tax judgments.

Until the enactment of the Federal Debt Collection Procedures Act, all civil judgments in federal court, including judgments in favor of the United States, were collected pursuant to state judgment execution laws. Variations in these laws and in state exemption laws resulted in great disparities from jurisdiction to jurisdiction in the ability of the United States to collect debts. The Act eliminated many of the procedural disparities by providing uniform prejudgment remedies, judgment execution procedures, and fraudulent transfer rules, for judgments entered in favor of the United States.[74] State limitations on collection from jointly owned property, such as tenancies by the entirety, and state exemption laws have not been preempted, however, and will continue to apply to such judgments. (*See* § IV.D.3, *supra*, for a fuller discussion of state exemption statutes.)

While the Act is generally the exclusive remedy for the collection of judgments in favor of the United States, it provides special treatment for collecting taxes. Pursuant to 28 U.S.C. § 3003(b), the remedies contained in the Internal Revenue Code and state judgment collection remedies are still available for the collection of taxes, in addition to the procedures contained in the Act. Moreover, the Act does not affect either federal tax liens or the procedures relating to "judicial sales," although it does provide new federal provisions for "judgment execution sales." *See* discussion, pp. 36-39, *supra*.

Judgments in suits that do not involve an assessed tax, and in which the tax lien and levy procedures are therefore not available, must be collected under the procedures contained in the Federal Debt Collection Procedures Act (or under procedures provided by state law).

The Federal Debt Collection Procedures Act provides three remedies for enforcing judgments: execution, garnishment, and installment payment orders. The court can issue any other writs under 28 U. S.C. § 1651 to support these remedies.

a. Notice and Other Preconditions

Section 3202(b), 28 U.S.C., imposes several preconditions and restrictions on the judgment enforcement remedies available under the Act. At the time that an application is made for a writ of execution, a writ of garnishment, or an installment payment order, the United States is required to prepare a form of notice to the taxpayer and submit the notice to the clerk of the court for issuance. A sample notice for a writ of execution or garnishment is attached as Exhibit 25. A sample notice and motion for court-ordered installment payments is attached as **Exhibit 26** and **26A**.

The notice advises the judgment debtor that property has been seized, identifies the debt owing to the United States, describes potentially applicable exemptions, explains the procedure and time for requesting a hearing, and gives notice of the intent to sell the property. Since state-law exemptions differ from jurisdiction to jurisdiction, the trial attorney should obtain from the appropriate United States Attorney's office a copy of the notice used by that office. The rule for determining which state's

exemption law is applicable is set forth in 28 U.S.C. § 3014(a)(2)(A), which provides that the applicable law is the law of the state in which the debtor's domicile was located for the 180 days immediately preceding the date on which the application is filed (or the state in which the domicile was located for a longer portion of such 180-day period than in any other state).

The notice, along with a copy of the motion, must be served on the judgment debtor and on anyone believed, after diligent inquiry, to have an interest in the property to which the writ or application relates.

The judgment debtor must request a hearing within 20 days of receiving the notice, and the property in question cannot be sold before the hearing. The hearing is supposed to be held within five days of the debtor's request. The debtor is only permitted to raise issues concerning: (1) exemption claims; (2) procedural defects relating to issuance of the enforcement remedy; and (3) for default judgments, the validity of the claim and good cause for setting the judgment aside.

b. Garnishment

Garnishment is a procedure for levying upon property of a debtor that is in the possession, custody, or control of a third party. To obtain a writ of garnishment, the United States must file an application that includes information about the amount due under the judgment and indicates a belief that the garnishee possesses property in which the debtor possesses a substantial nonexempt interest. A wage garnishment is limited to 25% of disposable income. In other words, 75% of disposable income is exempt. A garnishment writ has continuing effect.

The writ is issued by the court ex parte. Notice of the writ is given to both the garnishee and the debtor. The writ directs the garnishee to withhold the property and file an answer with the court. In addition, instructions are given to the garnishee about filing an answer and to the debtor about filing objections to the garnishee's answer and for requesting a hearing.

The garnishee has ten days in which to answer. The answer must list the property of the debtor being held, its value, prior garnishments, and information about future indebtedness of the garnishee to the debtor. The debtor and the United States have 20 days in which to object to the garnishee's answer and to request a hearing. The court is supposed to hold the hearing within ten days.

If a timely request for a hearing is not made, the court will enter an order directing the garnishee as to the disposition of the debtor's nonexempt interest in the property. The United States must give both the debtor and the garnishee an annual accounting of the proceedings. Upon termination of the writ, the United States must give a cumulative written accounting to both the debtor and the garnishee.

c. Court-Ordered Installment Payments

Court-ordered installment payments can be a very effective collection tool with a judgment debtor

who has income but refuses to make payments towards a tax debt. Court-ordered installment payments can be particularly effective against self-employed debtors such as lawyers, doctors, accountants, and consultants, who are effectively immune from IRS wage levies or FDCPA garnishments.

In many cases, Rule 69 discovery will be necessary in order to gather sufficient information about the debtor's income to justify an installment payment order. To obtain an installment payment order under § 3204, the trial attorney should file a motion with the court demonstrating either that the judgment debtor has substantial earnings from self-employment, or that he is diverting or concealing earnings. An installment payment order cannot be obtained if there is a writ of garnishment in effect for the same earnings and based on the same debt.

A motion for installment payment order should probably request that payments be made monthly, although a shorter period may be appropriate in some cases. Although a motion for an installment payment order can request that payments be made in specified amounts, if the debtor's income fluctuates, it may make more sense to request either that the debtor be required to pay over all of his earnings in excess of a certain floor amount, or that he be required to pay over a percentage of his earnings. That way, if the debtor's earnings are high for a particular month, our debt will be paid off faster; while if the debtor's income is low, he will not find himself involuntarily in contempt of court for failing to pay over earnings that he did not receive. In any case in which an installment payment order is obtained, the debtor should also be required to provide a sworn statement as to the dates, amount, and sources of all of his receipts for the applicable period. The district court has the power to require him to provide such a statement under I.R.C. § 7402(a). Section 3204(b) specifically provides that either a change in the debtor's financial circumstances, or the discovery of previously undisclosed assets of the debtor, can justify a modification of the amount or frequency of the installment payments, or even require immediate payment of the remaining amount of the debt.

A sample motion for installment payment order, along with a proposed order setting a hearing, and a proposed order requiring installment payments and disclosure of receipts, is attached as **Exhibit 26**. The motion should be filed with the court that entered the judgment, and notice of the motion must be served on the judgment debtor in the same manner as a summons, or by registered or certified mail. If the debtor has moved to another judicial district, the debtor may seek to have proceedings on the motion transferred to that district pursuant to 28 U.S.C. § 3004(b)(2).

If a judgment debtor fails to comply with an installment payment order, the judgment creditor's remedy is to obtain contempt sanctions from the court. Generally, a court can impose a fine or conditional imprisonment against a judgment debtor for civil contempt. These sanctions are not punitive but are designed to encourage the contemnor to comply with the court's order. Of course, fines will generally be of little use against debtors who already owe the Government substantial tax liabilities. The prospect of incarceration unless and until payment is made, however, is a strong incentive to pay promptly.

Some states (e.g., Michigan and New York) have their own statutes authorizing court-ordered

installment payments. In most situations you will want to rely on 28 U.S.C. § 3204 because of its uniform applicability in all states. You should, however, check the law of the state where you are seeking the order to see if you might be able to obtain better results using that state's installment payment order statute.

4. Collecting Specific Assets

a. IRAs and Other Retirement Funds

Retirement accounts and funds, such as Individual Retirement Accounts and § 401(k) plan funds, are frequently the largest and the only liquid asset in the hands of a judgment debtor. Such funds may not be subject to judicial garnishment or execution, yet the IRS can use its broad levy power under I.R. C. § 6331 to attach retirement accounts, which are not made specifically exempt from levy.[75] The Internal Revenue Manual does provide, however, that retirement plans "will be levied upon judiciously."[76] While the IRS Manual does not define the term "judiciously," its guidelines generally exempt from levy retirement funds with annual benefits of $6000 or less.[77] Accordingly, the trial attorney should consider asking the IRS to levy on retirement funds (or the income from the funds) only in accordance with the pertinent provisions of the IRS Manual.

b. Securities and Notes

Service of a notice of levy or a writ of execution on the maker of a note is sufficient to obtain possession of the debt owing on the note. In order to sell an installment note or securities, however, there must be actual physical possession of the stock certificates or paper representing the promise to pay for seizure to be accomplished. *See* Rev. Rul. 75-355, 1975-2 C.B. 478.[78]

The need to physically seize securities and notes is dictated by the ease with which securities, notes, and similar documents pass like money in the channels of business activity. Congress recognized the needs of the marketplace when it accorded the purchasers of securities and holders of security interests in securities a "superpriority" status under certain circumstances. I.R.C. § 6323(b)(1) provides that even though a notice of lien has been filed, the lien is not valid with respect to a security (as defined in § 6323(h)(4)) either as against a purchaser of the security or as against a holder of a security interest (as defined in § 6323(h)(1)) in a security who, at the time of the purchase or at the time the security interest came into existence, did not have actual notice or knowledge of the existence of the lien. If the trial attorney learns of a planned stock transfer or grant of a security interest, the trial attorney should notify the potential purchaser or holder of the security interest of the existence of the tax liens. This notification should be performed by certified mail, return receipt requested, so as to provide solid proof of actual notice.

When the trial attorney cannot determine who is in possession of stock certificates or installment notes so that they may be levied upon or when ownership of stock or the existence of loans is unclear, I.

R.C. §§ 7402(a) and 7403 may provide a means of collection. A court may order the taxpayer to turn over stock certificates and notes to a receiver so that they may subsequently be sold.[79] It should be kept in mind, however, that where the taxpayer owns a controlling interest in the corporation, it may be more advantageous for the receiver to vote the stock to liquidate the corporation so that the assets may be sold to satisfy the judgment.[80]

c. Wages

If a taxpayer has employment income, an IRS levy on wages is a very effective way to collect a judgment. Unlike most other IRS levies, the effect of an IRS wage and salary levy is continuous, meaning that the employer must continue to pay the appropriate amount to the IRS each payday without the need for the IRS to continue to serve additional levies each pay period. I.R.C. § 6331(e).

An IRS levy (including a wage levy) requires, except in a situation where collection is in jeopardy, a 30-day notice of intent to levy. I.R.C. § 6331(d). The taxpayer has the right to protest the proposed levy to the IRS Office of Appeals, and even go to court, if Appeals disallows his protest. *See* IV.E.1, *infra*. Section 6334(d) provides for certain exemptions from a wage levy. The formula for determining the exempt amount is based on the standard deduction and the aggregate amount of the deductions for personal exemptions allowed the taxpayer under I.R.C. § 151 in the year in which the levy occurs. The weekly exempt amount is the sum of the standard deduction and of the total amount of deductions for exemptions to which the taxpayer is entitled, divided by 52. Section 6334(d)(2) provides that–unless the taxpayer submits verification to the contrary–the IRS can assume that the taxpayer is married, filing a separate return, and has one exemption.

An alternative to an IRS wage levy is a garnishment of wages pursuant to 28 U.S.C. § 3205. (*See* discussion of garnishment, § IV.E.3.b., *supra*.) Because a court must issue a writ of garnishment and because a garnishment is subject to state exemptions, however, an IRS wage levy may be easier and more effective. See also the discussion of installment payment orders, § IV.E.3.c., *supra*, for an explanation of how to deal with a self-employed debtor.

d. Co-owned Property

Frequently a delinquent taxpayer/judgment debtor co-owns property[81] with one or more other persons (most commonly a spouse or other relative) who are not indebted to the Government. In other situations, the delinquent taxpayer may own only a life estate or a remainder interest in the property. Also, in most states the spouse of a judgment debtor has dower, curtesy, or homestead rights in some or all property of the debtor. The federal tax lien, of course, attaches only to the taxpayer's interest in the property and not to any interest held by a non-debtor.

While co-ownership of property between a taxpayer/debtor and a non-debtor complicates the Government's efforts to sell the property in order to collect the delinquent tax, the Government may be

able to sell the entire property in a judicial sale and then allocate the sale proceeds between the taxpayer's interest (which goes to the Government) and the interest of the non-debtors who have an interest in the property. (Almost always, a sale of the entire property with an allocation of the sale proceeds commensurate with the co-owners' interests will yield the Government a greater amount than could be obtained by selling only the taxpayer's interest in the property.)

I.R.C. § 7403(a) authorizes the United States to bring an action in Federal District Court to enforce a federal tax lien "or to subject any property, of whatever nature, of the delinquent [taxpayer], or in which he has any right, title, or interest, to the payment of such tax or liability." (Emphasis added.) The Supreme Court, in *United States v. Rodgers*, 461 U.S. 677, 692-94 (1983), held that § 7403, as a general rule, allows the Government to sell the entire property in which the delinquent taxpayer has "an interest."[82] The Court noted, however, that § 7403 "does not require a district court to authorize a forced sale under absolutely all circumstances, and ... some limited room is left ... for the exercise of reasoned discretion." *Id*. at 706. The Court provided examples of factors a district court should consider in exercising its limited discretion not to order a sale of the entire property. Id. at 709-11. *See United States v. Bierbrauer*, 936 F.2d 373 (8th Cir. 1991), for an analysis of the application of these factors in a particular case.

Before bringing a § 7403 lien foreclosure suit in a situation where non-liable third parties have ownership interests in the property along with the taxpayer, a Tax Division trial attorney should consider the factors listed in *Rodgers*.

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41. Tax Division procedures for transferring the judgment and closing the file are described in § VII, *infra*.

42. Technical Support (formerly Special Procedures) is a part of the IRS Collection Division located in major cities throughout the country. It is staffed by Collection Division revenue officers who are very knowledgeable about IRS collection procedures.

43. For ten days, the automatic stay on execution of a judgment is in effect. *Fed. R. Civ. P. 62(a)*. *See* § III.E., *supra*.

44. The IRS would not, of course, wish to foreclose the tax lien on a home unless there were no other assets available; however, that might, indeed, be the situation.

45. The Form 433-A (2001) requires information concerning transfers of assets in the past 10 years for less than their actual value. In circumstances where the tax years are more than 10 years old, you may want to inquire about transfers further back than 10 years. Also, in some circumstances you may want more information on pension funds. You should prepare additional questions to be answered under penalties of perjury.

46. *See also* 28 U.S.C. § 3015(a), which specifically authorizes postjudgment discovery as to the

debtor's financial condition.

47. The IRS can issue collection summonses pursuant to I.R.C. § 7602, but, as a practical matter, summonses are generally considerably less effective than discovery depositions.

48. *See* **Exhibits 10 and 11** for a suggested sample set of Rule 69 interrogatories and document requests. In some circumstances, a paralegal may provide assistance in preparing these discovery requests; however, the primary responsibility for collecting on a judgment remains with the trial attorney.

49. A subpoena to a bank pertaining to the account of a person other than the judgment debtor must comply with the notice provisions of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3412, which applies to financial information about a customer who is an individual or a partnership of five or fewer individuals.

50. *United States v. Jones*, 877 F. Supp. 907, 914-915 (D.N.J.) >*aff'd*, 74 F.3d 1228 (3d Cir. 1995). (The United States is deemed a creditor of the taxpayer as of the date that the obligation to pay income taxes accrues. Tax liabilities are deemed due and owing at the close of the taxable year.) *United States v. Green*, 201 F.3d 251, 257 (3d Cir. 2000) ("The United States is considered a creditor 'from the date when the obligation accrues,' essentially on April 15 of the year following the tax year in question.") (citation omitted).

51. *See United States v. Bacon*, 82 F.3d 822 (9th Cir. 1996); *United States v. Fernon*, 640 F.2d 609 (5th Cir. 1981).

52. *See Bresson v.. Commissioner*, 213 F.3d 1173 (9th Cir. 2000); *United States v. Bantau*, 907 F. Supp. 988 (N.D. Tex. 1995); *Stoecklin v. United States*, 858 F. Supp. 167 (M.D. Fla. 1994).

53. Using LEXIS/NEXIS, choose News & Business Databases, then Company & Financial to find some of the following information about a company: address, telephone number, number of employees, business type, whether a company is privately held, locations, payment history for a company, owner identification, and sales information.

54. "Attributes" include a judgment debtor's real property, judgment and lien information, and information about associated entities. (If the debtor has some interest or relation to an entity, the trial attorney, by using hypertext links, can obtain information regarding the entity, including a profile, the names of executives of the entity, and judgments and liens against the entity).

55. The federal tax lien and the judgment lien the Government obtains when a tax assessment is reduced to judgment are separate, independent liens. *See* note 18, *supra*.

56. No federal tax lien is involved when the judgment is for an unassessed liability (e.g., for failure to honor a levy, for an erroneous refund, or for liability under I.R.C. § 3505). In such cases only the judgment lien can be relied on to establish lien priority.

57. Failure to give notice and demand does not invalidate the assessment. *See United States v. Berman*,

825 F.2d 1053 (6th Cir. 1987), *on remand*, 1988 WL 126557 (S.D. Ohio), *judgment aff'd*, 884 F. 2d 916 (6th Cir. 1989).

58. *United States v. National Bank of Commerce*, 472 U.S. 713, 719 (1985).

59. *United States v. McDermott*, 507 U.S. 447 (1993); *Glass City Bank v. United States*, 326 U.S. 265 (1945). The terms "property or rights to property" referred to in the statute encompass every type of interest, intangible as well as tangible, that the taxpayer might have. *Drye v. United States*, 528 U.S. 49, 56 (1999); *National Bank of Commerce*, 472 U.S. at 719-20; *accord United States v.* Subranni (*In re Atlantic Bus. Comm. Dev. Corp.*), 994 F.2d 1069 (3d Cir. 1993); *Don King Productions, Inc. v. Thomas*, 945 F.2d 529, 533 (2d Cir. 1991) (federal tax lien can attach to the right to receive future income assigned by a taxpayer prior to the assessment of the taxes due). The federal tax lien also attaches to a taxpayer's equitable interests in property. *See, e.g., Orr v. United States*, 180 F.3d 656, 662 (5th Cir. 1999) (citing, among other cases *United States v. Klimek*, 952 F. Supp. 1100, 1113-1119 (E.D. Pa. 1997)), *cert. denied*, 529 U.S. 1099 (2000); *Southern Bank of Lauderdale Cty. v. IRS*, 770 F.2d 1001, 1009-1110 (11th Cir. 1985).

60. *United States v. Craft*, 535 U.S. 274, 122 S. Ct. 1414, 1420 (2002); *Drye v. United States*, 528 U.S. at 58; *United States v. Rodgers*, 461 U.S. 677, 683 (1983); *Aquilino v. United States*, 363 U.S. 509, 513 (1960) (citation omitted). *Accord 21 West Lancaster Corp. v. Main Line Rest. Corp.*, 790 F.2d 354, 356 (3d Cir.), *cert. denied*, 479 U.S. 842 (1986). "This follows from the fact that the federal statute 'creates no property rights but merely attaches consequences, federally defined, to rights created under state law. * * * And those consequences are a matter left to federal law.'" *National Bank of Commerce*, 472 U.S. at 722. Once, however, "it has been determined that state law creates sufficient interests in the [taxpayer] to satisfy the requirements of [the statute], state law is inoperative,' and the tax consequences thenceforth are dictated by federal law." *National Bank of Commerce, supra; Drye v. United States*, 528 U.S. at 58 ("We look initially to state law to determine what rights the taxpayer has in property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as ‘"property' or ‘rights to property' within the compass of federal tax legislation."); *accord United States v. Craft*, 122 S. Ct. at 1420.

61. *United States v. New Britain*, 347 U.S. 81 (1954).

62. *New Britain*, 347 U.S. at 85.

63. I.R.C. § 6323(b) provides protection (known as super-priority) for certain interests even though a notice of federal tax lien was filed before those interests came into existence. Also, § 6323(c) sets forth special rules with respect to a commercial transaction financing agreement, a real property construction or improvement financing agreement, and an obligatory disbursement agreement.

64. With respect to property situated in the District of Columbia, the notice of federal tax lien is to be filed with the Recorder of Deeds of the District of Columbia. § 6323(f)(1)(C).

65. With respect to real property in certain states, not only must a notice of federal tax lien be filed to

compete against the interests set forth in § 6323(a), but the fact of filing must be entered and recorded in an index. § 6323(f)(4).

66. The place where the notice of federal tax lien must be refiled is set forth in I.R.C. § 6323(g)(2).

67. *United States v. Craft*, 122 S. Ct. at 1422-26 (2002) (tax lien attached to interest in property held by tenants by entirety); *United States v. Rodgers*, 461 U.S. 677 (1983) (federal tax lien could be foreclosed against homestead property exempt under state law).

68. *Craft, supra*.

69. References in this Manual to "state exemptions" should be understood as covering as well the § 522 (d) exemptions when elected by the debtor.

70. *See, e.g., American Trust v. American Community Mutual Ins. Co*., 142 F.3d 920, 924-925 (6th Cir. 1998); *In re Voelker*, 42 F.3d 1050 (7th Cir. 1994).

71. Section 523(a) also applies to hardship discharges granted pursuant to the provisions of § 1328(b) of the Bankruptcy Code.

72. If a tax is not dischargeable, then the interest associated with that tax claim is also not dischargeable. *In re Larson*, 862 F.2d 112 (7th Cir. 1988).

73. *See In re Tomlan*, 102 B.R. 790 (E.D. Wash. 1989), *aff'd per curiam*, 907 F.2d 114 (9th Cir. 1990).

74. The Act comprises Subtitle A (28 U.S.C. §§ 3001-3015), Definitions and General Provisions; Subtitle B (28 U.S.C. §§ 3101-3105), Prejudgment Remedies; Subtitle C (28 U.S.C. §§ 3201-3206), Postjudgment Remedies; and Subtitle D (28 U.S.C. §§ 3301-3308), Fraudulent Transfers.

75. *See, e.g., First Fed. Sav. and Loan Ass'n v. Goldman*, 644 F. Supp. 101 (W.D. Pa. 1986) (holding that an IRS levy attached to an IRA account because no property or rights to property are exempt from levy other than property specifically exempted by I.R.C. § 6334(a), and retirement funds are not so exempted). I.R.C. § 6334(a)(6) does specifically exempt from levy certain enumerated annuity and pension payments: benefits under the Railroad Retirement Act, the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and annuities based on retired or retainer pay under 10 U.S.C. ch. 73. Military retirement benefits generally have been held to be not exempt from an IRS levy. *Melechinsky v. Secretary of the Air Force*, 1983 WL 1609 (D. Conn.).

76. *See* 2 Administration, CCH Internal Revenue Manual, Part V, Collection Activity, ¶¶ 536(14).22, 536 (14).5, which sets forth internal IRS guidelines as to when and how the IRS should levy on retirement funds. Internal Revenue Manual ¶ 536(14).5(1) states:

> 6 Qualified pension, profitsharing, stock bonus, IRA plans and retirement plans benefitting self-employed individuals, or interest earned on these plans, are not exempt

from levy. However, because the plans are established for the taxpayer's future welfare, they will be levied upon judiciously.

77. Id., ¶ 536(14).22:

Retirement plan benefits (income) receivable from a qualified pension fund or account, generally will not be levied upon if the annual benefits are $6000 or less ($500 or less per month).

78. *Cf. In re Frank*, 55-2 U.S. Tax Cas. (CCH) ¶ 9772 (S.D. Cal. 1955). In some circumstances, levy on the transfer agent may be appropriate. *Nelson v. United States*, 1994 WL 247214 (E.D. Mich. 1994).

79. United States v. Ross, 196 F. Supp. 243 (S.D.N.Y. 1961), aff'd, 302 F.2d 831 (2d Cir. 1962); *Cf. Florida v. United States*, 285 F.2d 596 (8th Cir. 1960); *Goldfine v. United States*, 300 F.2d 260, 264 (1st Cir. 1962).

80. *United States v. Lias*, 103 F. Supp. 341, 344 (N.D. W. Va.), *aff'd*, 196 F.2d 90 (4th Cir. 1952).

81. For example, as tenants-in-common, as joint tenants, or as tenants by the entirety.

82. The *Rodgers* Court noted that, in an administrative seizure and sale of property by the IRS pursuant to its I.R.C. § 6331 levy power (as opposed to a judicial sale under I.R.C. § 7403), the Government can sell only the interest in the property belonging to the taxpayer. Rodgers, 461 U.S. at 696. *See also Mansfield v. Excelsior Ref. Co.*, 135 U.S. 326, 339-41 (1890); *National Bank & Trust Co. of South Bend v. United States*, 589 F.2d 1298, 1303 (7th Cir. 1978); *Herndon v. United States*, 501 F.2d 1219, 1223 (8th Cir. 1974).

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V. Settlements

For guidance on settlements involving collectibility issues, please refer to the Tax Division's Settlement Reference Manual.

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VI. Reporting Collection Activities to the Case Management System

It is essential that all pertinent information concerning collection and payment activities be accurately and timely reported on TaxDoc, the Division's automated case management system. A list of TaxDoc activity codes related to judgment collection is in Exhibit 27. First, the monthly collection monitor report (the monitor) provided by the computer to Tax Division managers is only as accurate, up-to-date, and complete as the information being reported. The Division relies on the monitor to ensure that important deadlines in the judgment collection process are not missed. Second, accurate, up-to-date, and complete information reporting ensures that the Division management is aware of the total amount of outstanding judgments and the status of the Division's efforts to collect those judgments.

One of the most important items to be reported on TaxDoc is the amount of incoming payments and whether the payments are pursuant to a settlement or a judgment. Generally, payments received directly by the Tax Division are recorded on the system by the trial section's Data Management Specialist (DMS) shortly after receipt. The system also has codes, however, to record payments received by the IRS or the United States Attorney's office while the case is still open in the Tax Division. Generally, however, payments made to the IRS or the United States Attorney are not made known to the trial section's DMS, unless and until the trial attorney brings it to the technician's attention. The best way to do this is to send a letter to the IRS or United States Attorney confirming that they have received a payment of the specified amount in the case on a specified date and that the Tax Division is recording the payment. The letter, along with the trial attorney's submission to the DMS of proper payment code, will ensure that the Tax Division's files and TaxDoc reflect the payment.

It is also important that paralegal and attorney time spent on judgment collection efforts be reported properly on TaxDoc. The TaxDoc attorney time sheet has a separate code for time spent on collection activities. This is important for purposes of advising Tax Division management of the amount of attorney time devoted to collection work and can be important for purposes of enabling the Tax Division to obtain adequate budgetary resources to carry out its judgment collection duties successfully.

Similarly, when the Tax Division's collection activity ceases and a case is closed, either because the judgment has been fully collected or because the uncollected judgment is being transferred to the IRS for further collection, it is essential that the proper closing codes be reported on TaxDoc to accurately reflect final disposition of the case.

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VII. Closing of Cases and Reference of Judgments for Further Collection Activity

A. When and Where

A case should be closed as uncollectible in the Tax Division and the judgment referred to the IRS for further collection efforts where the initial collection activity reveals no assets which may be currently and/or readily collected by the Tax Division

B. Steps to Refer the Judgment to the IRS

When closing the case, IRS Technical Support (formerly Special Procedures) should be advised that the judgment appears not to be currently and/or readily collectible by the Tax Division and that the Tax Division is closing its file on the case. IRS Technical Support should be requested to:

(1) Take action on the taxpayer's account to ensure that any overpayments of tax are offset against the judgment liability;

(2) Attempt to levy on income or assets that are located; such as, for example, serving a continuing levy on wages;

(3) Notify the Tax Division if assets or income need to be reached by a foreclosure action, a suit to set aside a fraudulent conveyance, or other litigation;

(4) Refile the notice of tax lien, as appropriate;

(5) Request the Tax Division or United States Attorney to extend the judgment lien, as appropriate;

(6) Conduct investigations, as appropriate, to determine if any sources exist for satisfying the judgment; and

(7) Ensure that the federal judgment lien has been perfected on real property of the debtor by filing an abstract of the judgment wherever real property of the debtor is located.

(8) Assess any court costs, sanctions and attorneys' fee awarded to the United States as permitted under I.R.C. § 6673(b). See **Exhibit 6** for a sample Form to Direct IRS to Assess and Collect in the Same Manner as a Tax, Sanctions, Attorney Fees, and Court Costs.

A sample letter to IRS Technical Support is attached as **Exhibit 28**. A list of mailing addresses and telephone numbers for IRS Technical Support offices is attached as **Exhibit 29**.

When referring the judgment to the IRS, the trial attorney also should advise Technical Support of any special circumstances, such as those listed below, and should ask Technical Support to monitor or investigate and take appropriate action:

(1) If the taxpayer is a defunct corporation without assets, an IRS investigation of transferee liability may be appropriate and may be requested concurrently with the referral, if a prior request has not been made;

(2) If the taxpayer has died, and the estate was closed without assets, an IRS investigation of possible assets or transferee liability may be appropriate and may be requested concurrently with the referral, if a prior request has not been made;

(3) If the taxpayer's whereabouts are unknown, despite a search, or the taxpayer has left the country, then, concurrently with the referral, the IRS should be given any information which will assist it in locating the taxpayer or the taxpayer's assets. The Immigration and Naturalization Service can be requested to institute a border check for the return of the taxpayer. A form letter to the Immigration and Naturalization Service is attached as **Exhibit 30**.

(4) If the taxpayer has pauperized himself or herself, will not work for wages, own property, hold a bank account, etc.;

(5) If the taxpayer is imprisoned for a long period and investigation has revealed no assets;

(6) If the taxpayer has a possibility of inheritance or survivorship of a joint tenancy or tenancy by the entirety; or

(7) If the taxpayer's financial situation appears likely to improve for any other reason, such as the maturity of dependents, a fresh start after bankruptcy, or an anticipated growth in income or business.

When all of these procedures have been accomplished, the Tax Division's responsibility for judgment collection has been met.