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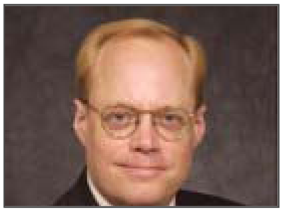

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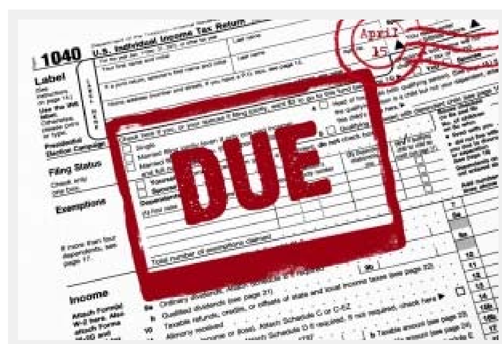
Worse Than Paying Taxes? Paying Someone Else's---And IRS Can Make You Do It



Can the IRS collect ***someone else's*** taxes from ***you?*** In some cases yes where you end up with assets or money from that person. You may have a right to the assets or money, but the IRS trumps you. The IRS calls it transferee liability and says 'show me the money.'

Take Joseph L. Mangiardi, who died in 2000. Lots of money was spent on lawyers in this mess. I noted earlier court cases in this same tax kerfluffle here: Paying Taxes Pennies On The Dollar. Mangiardi's daughter Maureen was co-executor of her dad's estate. When she filed the estate tax return in 2001, the tax due totaled about $2.5M.

The estate was mostly stock and a retirement account, but there was plenty of value so there should have been no problem. Stock prices were low, so it made sense to let them rebound before selling. The estate asked for time and the IRS said sure. The IRS and heirs would both do fine.

You can guess what happened. Instead of waiting for stock prices to rebound, the executors must have thought they were Gordon Gekko. They engaged in active trading of securities, buying and selling. Unfortunately, they weren't Gordon Gekko and lost money. That was bad enough.

But like Gordon Gekko, the executors were paying themselves hundreds of thousands of dollars in fees. The IRS got pretty annoyed. The IRS first went after the estate but found it was insolvent. Meanwhile, the tax debt had ballooned to over $3 million. See *U.S. v. Mangiardi*.

The one source of money left was the retirement account that had already been distributed to beneficiaries. Maureen's share of it was about $416K. The IRS went after it, and Maureen went to court to prevent it. Hey, that was hers as an heir of her father's she claimed.

The court didn't have much sympathy. The IRS had a tax lien on this money, the court said, for 10 whole years. When an estate transfers property, the IRS lien goes with it. In fact, the transferee takes the estate's assets subject to the lien.

On top of the IRS's lien, the tax code creates personal liability. When Maureen got her share, it was subject to the claims of the IRS. See Section 6901(a)(1)(A)(ii). Maureen said the IRS took too long–ten years is way too long! After all, doesn't the IRS usually have only three years to come after taxes?

Sometimes, but here the court agreed with the IRS. The statute of limitations against a transferee is the normal three year statute, plus an additional year. But that four years expired, Maureen claimed. Sure, the estate signed extensions of time, but that was only *for the estate* to pay its tax, not for her as transferee.

Nice try, Maureen. The court said ***transferee*** liability is really the mirror image of the ***transferor's*** liability. That meant the statute of limitations was still open, and Maureen lost out.

The moral of this story? You could find several here. Don't be executor. If you do, be very conservative. Don't think you're Gordon Gekko. If you do, don't pay yourself too much. And maybe most important? Watch the statute of limitations carefully.

You can reach me at Wood@WoodLLP.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*