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Legal Alerts

I Sold the Ferrari but Failed to pay the IRS – Oops!

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Garvey Schubert Barer Legal Update, June 28, 2013.

People are often surprised by the long reach of Internal Revenue Service ("Service" or "IRS") liens.[1] Plains Capital Corporation ("Plains") recently learned this lesson. Plains lost a fight with the Service in a case before the United States District Court for the Eastern District of Texas. It appealed to Fifth Circuit Court of Appeals. Losing again, Plains proceeded with an appeal to the United States Supreme Court. Unfortunately, on June 24, 2013, the highest court in the nation refused to hear Plain's appeal.[2] The saga is over for Plains, but the case should be a loud warning to others.

In 2002 and 2003, the Service assessed taxpayer Gregory Rand ("Rand") for tax liabilities arising from 2000 and 2002. It eventually filed notices of federal tax liens totaling over $3 million ("Tax Liens").

In 2005, Rand obtained a $200,000 line of credit from Plains. Plains was aware of the Tax Liens. To secure its credit extension, however, it took possession of the title to Rand's 2005 Ferrari. Plains thought taking possession of the vehicle title would put it in front of the IRS. **Wrong!**

In 2007, Rand agreed with the IRS that he would deliver the Ferrari to Boardwalk Motor Sports, Ltd ("Boardwalk"). Boardwalk agreed to sell the vehicle on consignment.

The Service and Plains could not agree upon the priority of their respective liens. So, the IRS served a notice of levy on Boardwalk and instructed Boardwalk to deliver the sale proceeds to it. Later, an IRS agent instructed Boardwalk not to release the sale proceeds until the IRS and Plains reached agreement on lien priorities. If it was unsure whether an agreement was reached, Boardwalk was instructed to go to the local court and file an interpleader action.

Less than one month later, Boardwalk sold the Ferrari for $210,454. Boardwalk immediately attempted to contact the IRS agent to discuss what to do with the proceeds, but the agent was away on vacation. Rather than wait for the agent's return, or pursue an interpleader action, Boardwalk inexplicably sent the net sale proceeds ($210,454 less a commission and sale costs = $194,982) to Plains and obtained the vehicle title for the buyer.

The IRS agent returned from vacation and learned of the sale. Likely irate, the agent served Boardwalk

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with a demand for payment of the net sales proceeds. He also served a notice of levy on Plains.

Having received no acceptable response from either Boardwalk or Plains, the Service sued both of them for failure to honor the demand and levy. It also sued them for tortious conversion. The Fifth Circuit concluded:

- The IRS had perfected its lien.
- The IRS' lien was superior to Plain's lien.
- Once the Ferrari was sold, the Service's lien attached to the sale proceeds.
- Plains failed to honor the IRS' levy.[3]

There are many lessons learned:

- Subsequent liens (including possession of title to a vehicle) generally do not trump a prior IRS lien.
- If unsure who has superior rights to sale proceeds, consider filing an interpleader action and let the court decide the issue.
- Do not ignore IRS liens or levies; possession of the taxpayer's property generally will not save the day.

The GSB Tax and Benefits Group *has significant experience in handling tax controversy cases. For more information about tax liens or tax controversy matters, please contact: Larry Brant lbrant@gsblaw.com 503-553-3114*

[1] This article is for educational purposes only and should not be relied upon as tax or legal advice.
[2] U.S. v. Boardwalk Motor Sports Ltd. And Plains Capital Corporation, 692 F3d (5th Cir. 2012), certiorari denied (NO. 12-1025), June 24, 2013.
[3] Due to state law technicalities, the court found no conversion occurred.

Featured People

Larry J. Brant

Principal|Portland

503.553.3114 larry.brant@foster.com

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