



Agricultural Law Press

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Fiduciary Liability for Unpaid Federal Taxes

-by Neil E. Harl*

A late 2008 Federal District Court case in California, *United States v. Bevan*¹ has focused attention once again on the very different treatment of fiduciaries in terms of liability for unpaid federal taxes depending upon the nature of the fiduciary relationship. That case approved fiduciary liability for unpaid federal estate taxes while federal law specifically bars fiduciary liability for bankruptcy trustees and other bankruptcy fiduciaries acting under Title 11 of the United States Code.² That inconsistency in treatment, based on Congressional enactments, continues to puzzle fiduciaries and others.

United States v. Bevan

It is difficult to marshal sympathy for fiduciaries who persist in failing to pay federal estate tax for nearly 15-years, particularly when the fiduciaries were children of the decedent. But federal law is clear on that point. As the United States Code states —

“A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.”

In the recent case of *United States v. Bevan*,³ the decedent died on October 23, 1993 with a sizeable estate. The Form 706 filed on July 24, 1994, showed a gross estate of \$2,911,615 with federal estate tax owing of \$756,438. The Internal Revenue Service made additional assessments and calculated the gross estate at \$3,125,945. Apparently, the federal estate tax was not paid. Rather, as trustee of the decedent’s trust, the decedent’s daughter transferred trust property to herself and her brother. The daughter’s personal liability as trustee of the trust for the estate’s unpaid federal estate tax was found by the District Court to be \$3.126 million, the value of assets held by the decedent at death. In addition, the daughter’s liability as a beneficial transferee of the estate was \$1.585 million, the date-of-death value of the nonprobate assets received from the trust. It is well-established that beneficiaries of a decedent’s estate are liable as transferees for unpaid federal estate tax even as to nonprobate assets.⁴ The decedent’s children were held liable for unpaid federal estate tax as both beneficial transferees of the decedent’s nonprobate assets and as trustees of the decedent’s trust.⁵ The statute, I.R.C. § 6324(a)(2) states —

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“If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees’ trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives or has on the date of the decedent’s death, property included in the gross estate . . . to the extent of the value, at the time of the decedent’s death, of such property, shall be personally liable for such tax.”⁶

Fiduciaries under Title 11

By contrast, fiduciaries acting under Title 11 (the bankruptcy title) are specifically excused from the provisions applicable to other fiduciaries in terms of liability for unpaid federal taxes.⁷ However, a Chapter 7 liquidating trustee was required in a 1992 case to file income tax returns for the bankruptcy estate.⁸ If a bankruptcy trustee makes mistakes in preparing a bankruptcy estate’s tax return, the trustee is personally liable only if guilty of gross negligence.⁹ Moreover, bankruptcy trustees may be excused from filing income tax returns if the records are not available for reasons beyond the control of the trustee.¹⁰ Thus, although bankruptcy trustees bear no personal liability for federal taxes owed by the bankruptcy estate,¹¹ a Chapter 11 trustee has been held personally liable for communication excise taxes under I.R.C. § 6672.¹²

In conclusion

While the circumstances are admittedly different, it would appear that any fiduciary functioning under federal regulation and supervision should be subjected to similar if not identical rules on the duty to assure the payment of unpaid federal taxes. The differences that have crept into federal law have likely been the result of lobbying efforts rather than the result of a careful assessment of what is needed to assure protection of federal funds. Excusing Title 11 fiduciaries from responsibility has also tended to result in diminished attention to the filing of federal tax returns as well as to indifference in maintaining records to assist debtors in assuming tax attributes at the termination of the bankruptcy estate.¹³

Endnotes

¹ 2009-1 U.S.Tax Cas. (CCH) ¶ 60,570 (E.D. Calif. 2008). See I.R.C. § 6324(a)(2).

² 31 U.S.C. § 3713 (a)(2).

³ 2009-1 U.S.Tax Cas. (CCH) ¶ 60,570 (E.D. Calif. 2008).

⁴ *Berliant v. Comm’r*, 729 F.2d 496 (7th Cir. 1984) (property owned in joint tenancy with decedent). See Ltr. Rul. 9851036, September 15, 1998 (property in joint tenancy with children subject to estate tax lien under I.R.C. § 6324A). Compare *United States v. Schneider*, 92-2 U.S. Tax Cas. (CCH) ¶ 60,119 (D. N.D. 1992) (spouse as transferee not personally liable for unpaid federal estate tax; tax not paid because of negligence of personal representative).

⁵ I.R.C. § 6324(a)(2).

⁶ I.R.C. § 6324(a)(2).

⁷ 31 U.S.C. § 3713(b).

⁸ *In re Pizza Pronto, Inc.*, 970 F.2d 783 (11th Cir. 1992).

⁹ *Dodson v. Huff*, No. 99-50205 (5th Cir. 2000).

¹⁰ *In re Molnick’s, Inc.*, 95-1 U.S.Tax Cas. (CCH) ¶ 50,209 (C.D. Calif. 1995) (records seized by parties to litigation).

¹¹ I.R.C. § 3713(b).

¹² CCA Ltr. Rul. 200036043, May 17, 2000).

¹³ I.R.C. § 1398(i). See 4 Harl, *Agricultural Law* § 39.04 (2008).

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