



# TAX PROCEDURE: SPECIAL ESTATE TAX LIENS AND ADMINISTRATIVE EXPENSES

Posted on **October 10, 2016** by **Jim Malone**



Congress created statutory liens to assure that taxes are collected. Federal tax liens function very much like judgments, although there is no judge involved. Instead, the administrative determination by the IRS becomes a lien after notice and demand. I.R.C. § 6321; *see also* Treas. Reg. § 301.6321-1. The lien becomes immediately effective against the taxpayer, but it only has priority against third parties if a notice is filed. I.R.C. § 6323(a). Even then, the general federal tax lien can be primed by certain other types of interests. *See* I.R.C. § 6323(b).

Estate taxes are treated differently. There is a special tax lien that applies specifically to estate taxes. *See* I.R.C. § 6324. And if the estate holds an interest in a closely-held business and elects to defer estate tax payments under section 6166 of the Internal Revenue Code, then another special estate tax lien applies. *See* I.R.C. § 6324A(a). The two estate tax liens have their own priority schemes which differ from each other and from the priority scheme for the regular federal tax lien. On October 4, 2016, the Eleventh Circuit addressed a priority question under section 6324A, leaving an executor out of luck. *United States v. Spoor*, No. 15-12877, 2016 U.S. App. LEXIS 17973 (11th Cir. Oct. 4, 2016).

The defendant, Gordon Spoor, was the personal representative of the Estate of Louise Paxton Gallagher and the trustees of a revocable trust that she established. The Estate included interests in a closely-held business, Paxton Media Group, a newspaper publisher. *Spoor*, 2016 U.S. App. LEXIS 17973 at \*1-\*2. The bulk of the estate's assets was concentrated in the Paxton Media Group interests, which the Tax Court valued at \$35,761,760. *Id.* at \*2. The Estate elected to pay the estate tax liability in installments, and it agreed to a special deferred lien under section 6324A of the Code. This lien was then recorded. *Id.* at \*2-\*3.

To complicate matters, the value of Paxton Media Group (and the Estate's interest in it) began to sink, and the deferred estate tax and interest exceeded the value of units of Paxton Media Group that the Estate held. *Id.* at \*3. To protect its interests, in 2012, the IRS demanded additional collateral, but the

Estate was unable to provide it. *Id.* Consequently, the IRS accelerated the deferred balanced due. *Id.*; see I.R.C. § 6324A(d)(5) (failure to post additional collateral triggers acceleration of deferred taxes); see also I.R.C. § 6166(g) (providing for acceleration of deferred taxes). By September 10, 2013, the Estate's deferred estate tax liability stood at \$10,483,006.47, and it owed significant income taxes as well, triggering a lien under section 6321 of the Code. *Spoor*, 2016 U.S. App. LEXIS 17973 at \*3-\*4.

On September 17, 2013, the United States filed suit to foreclose its lien under section 6324A, as well as the income tax lien. *Id.* at \*4. When the government moved for summary judgment, *Spoor* acknowledged the validity of the tax claims and liens; *Spoor* cross-moved, arguing that his unpaid administrative expense claim of \$486,265 was entitled to priority over the government's tax claims. *Id.* The district court agreed and granted *Spoor* summary judgment, reasoning that *Spoor's* claim, first asserted on the estate tax return, had priority under the common law principle of first in time, first in right. *Id.* at \*5.

On appeal, the Eleventh Circuit commenced its analysis by reviewing the operation of federal tax liens under section 6321, 6324, and 6324A of the Code. *Id.* at \*6-\*8. The court then noted that *Spoor* could not rely upon common law priority principles because his administrative expense claim was not a lien. *Id.* at \*9. The Court of Appeals next turned to the language of the Code, comparing the language governing the normal estate tax lien under section 6324 with the language of section 6324A. Observing that section 6324 explicitly excluded administrative expenses of an estate from the general estate tax lien, the court noted that this exclusion was not repeated in section 6324A. *Id.* at \*10-\*11; compare I.R.C. § 6324 (providing for estate tax lien while also providing that "expenses of . . . administration, allowed by any court having jurisdiction thereof, shall be divested of such lien") with I.R.C. § 6324A (providing that where election is made under section 6166 to defer estate tax payment, "the deferred amount (plus any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property").

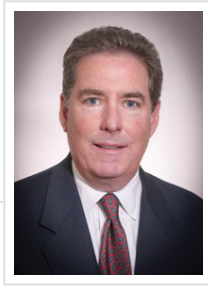
In the Eleventh Circuit's view, the difference in the language that Congress chose to use meant it did not intend to provide a priority to administrative expenses under section 6324A. *Spoor*, 2016 U.S. App. LEXIS 17973 at \*10-\*11. The court then turned to the specific priority rules contained in section 6324A, an exercise that confirmed its conclusion that administrative expenses did not have priority: "The . . . delineated categories of interests that may take priority over a § 6324A lien conspicuously do not include an executor's interest in administrative expenses." *Id.* at \*12.

The court also considered the different manner in which the two different estate tax liens arise, noting that a section 6324 estate tax lien arose as a matter of law, while a lien under section 6324A resulted from a choice by an executor. *Id.* at \*13. In the Eleventh Circuit's view, this was significant, because the executor could allocate other estate property to assure that administrative expenses were paid. *Id.* The timing was also significant because the section 6324A lien would arise after administration was complete. *Id.* at \*14-\*15. For good measure, the court noted that reading a priority for estate administration expenses into section 6324A would automatically mean the government's position was not fully secured since the amount of collateral it could demand was limited by the relevant tax liabilities. *Id.* at \*16-\*17.

The Eleventh Circuit' reasoning is difficult to fault. The case offers a cautionary lesson for executors and those who represent them.

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