

Statutory Excerpts Relating to U.S.A. v. Johnson

ACTEC Estate and Gift Tax Committee

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§ 6324. Special Liens for Estate and Gift Taxes.

(a) Liens for Estate Tax.

. . .

(2) Liability of Transferees and Others. If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee . . . or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. . . .

(All underscoring is added throughout.)

§ 6901. Transferred Assets.

(a) Method of Collection.

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

(1) Income, Estate, and Gift Taxes.

(A) Transferees. The liability, at law or in equity, of a transferee of property--

(i) of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),

(ii) of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or

(iii) of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes),

in respect of the tax imposed by subtitle A or B.

(B) Fiduciaries. The liability of a fiduciary under section 3713(b) of title 31, United States Code[,] in respect of the payment of any tax described in

subparagraph (A) from the estate of the taxpayer, the decedent, or the donor, as the case may be.

(c) Period of Limitations.

The period of limitations for assessment of any such liability of a transferee or a fiduciary shall be as follows:

(1) Initial Transferee. In the case of the liability of an initial transferee, within 1 year after the expiration of the period of limitation for assessment against the transferor;

...

(3) Fiduciary. In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

...

(h) Definition of Transferee.

As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under section 6324(a)(2), is personally liable for any part of such tax.

...

§ 6503. Suspension of Running of Period of Limitation.

...

(d) Extensions of Time for Payment of Estate Tax.

The running of the period of limitation for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161(a)(2) or (b)(2) or under the provisions of section 6163 or 6166.

...

§ 2033. Property in Which the Decedent had an Interest.

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

§ 2036. Transfers with Retained Life Estate.

(a) General Rule.

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life . . . —

- (1) the possession or enjoyment of, or the right to the income from, the property, or
- (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

. . .

§ 2038. Revocable Transfers.

(a) In General.

The value of the gross estate shall include the value of all property—

- (1) **Transfers after June 22, 1936.** To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power . . . to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death.

. . .

§ 2035. Adjustments for Certain Gifts Made Within 3 Years of Decedent's Death.

(a) Inclusion of Certain Property in Gross Estate.

If—

- (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and
- (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

. . .

(e) Treatment of Certain Transfers from Revocable Trusts.

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

§ 676. Power to Revoke.

(a) General Rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revert in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

. . .

§ 2204. Discharge of Fiduciary from Personal Liability.

(a) General Rule.

If the executor makes written application to the Secretary for determination of the amount of the tax and discharge from personal liability therefor, the Secretary . . . shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified (other than any amount the time for payment of which is extended under sections 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

. . .

(c) Special Lien under Section 6324A.

For purposes of . . . subsection (a) . . . , an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166) shall be treated as the furnishing of bond with respect to the amount for which the time for payment has been extended under section 6166.

. . .

§ 6324A. Special Lien for Estate Tax Deferred under Section 6166.

(a) General Rule.

In the case of any estate with respect to which an election has been made under section 6166, if the executor makes an election under this section (at such time and in such manner as the Secretary shall by regulations prescribe) and files the agreement referred to in subsection (c), 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.

(b) Section 6166 Lien Property.

(1) In General. For purposes of this section, the term “section 6166 lien property” means interests in real and other property to the extent such interests—

- (A)** can be expected to survive the deferral period, and
- (B)** are designated in the agreement referred to in subsection (c).

. . .

31 U.S. Code § 3713 (Priority Statute)

(a)

(1) A claim of the United States Government shall be paid first when—

(A) a person indebted to the Government is insolvent and —

- (i) the debtor without enough property to pay all debts makes a voluntary assignment of property;
- (ii) property of the debtor, if absent, is attached; or
- (iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(b) 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.