

Tax Procedure: A Look at Jeopardy Assessments.

On Sunday, *The Philadelphia Inquirer* ran a well-done article concerning some issues that former State Senator Vincent Fumo is presently having with the IRS. Apparently, the former Senator was recently the subject of a jeopardy assessment, a collection measure that is rarely employed and extremely disruptive. To understand why a jeopardy assessment is a big deal, a little context is in order.

If the IRS concludes that a taxpayer owes additional income taxes, it must make an assessment for the additional tax, along with any penalties and interest. The same rule applies for estate and gift taxes. Before the IRS can make that assessment, however, it normally must comply with the deficiency procedures, which require (among other things) that the taxpayer receive a formal notice of deficiency, which then gives the taxpayer ninety days to petition the tax court for review. I.R.C. §§ 6312(a), 6313(a). If the taxpayer files a petition for tax court review, the assessment does not become final, and the usual collection measures that the IRS has at its disposal, such as levies and liens, cannot be employed until the deficiency assessment is final, which can delay the process for months or years.

Some cases call for special treatment—if the taxpayer is loading bags full of cash and other valuables onto her yacht, Congress concluded that the IRS should not have to wait out the normal deficiency procedure. Consequently, it provided the IRS with two tools to deal with emergencies:

- Section 6851 of the Internal Revenue Code authorizes a “termination assessment,” which permits an immediate assessment for either the current tax year or the prior year if the deadline for filing a return has not yet passed;
- Section 6861 of the Code authorizes a “jeopardy assessment” whenever the Secretary of the Treasury believes that collection will be jeopardized by delay.

There are regulations that spell out the standards in greater detail. See Treas. Reg. § 301.6851-1 (setting standards for termination assessments); Proc. & Admin. Reg. § 301-6861-1 (adopting termination assessment standards for purposes of jeopardy assessments).

While courts have also weighed in on this subject, the regulation under Section 6851 is the starting point in the analysis. It cites three relevant factors:

- (i) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.
- (ii) The taxpayer is or appears to be designing quickly to place his, her, or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.
- (iii) The taxpayer's financial solvency is or appears to be imperiled.

Treas. Reg. § 301.6851-1(a)(i)-(iii). This last factor is qualified: to keep the IRS from bootstrapping itself into position to make a jeopardy or termination assessment, the insolvency cannot be the result of the assessment of tax, penalties and interest.

Once the IRS makes a formal jeopardy assessment, the assessed amount “shall become immediately due and payable and the district director shall serve upon such taxpayer notice and demand for immediate payment of such tax.” Treas. Reg. § 301.6851-1(a). As a consequence the IRS can then immediately begin to take collection action by filing liens against the taxpayer’s property, seizing his physical assets, and levying against bank accounts.

Looking at the factors in former Senator Fumo’s case, he plainly isn’t going anywhere as he is in federal custody, and the real estate that is apparently the focus of the IRS is tough to conceal or dissipate. Instead, the basis for the jeopardy assessment seems to rest upon the fact that Fumo transferred various assets to his son and his fiancée.

This highlights another consequence of the jeopardy assessment: by triggering an immediately collectible claim against a taxpayer, it also triggers the array of third party collection weapons that the IRS has at its disposal, such as nominee and alter-ego liens and levies, as well as fraudulent transfer litigation. Presumably, that is what is on the horizon for former Senator Fumo’s fiancée and his son.

I will round out discussion of this topic in a future post.

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