

A Different Sort of Seizure.

Congress has given the IRS potent tools to collect taxes: it can impose liens on a taxpayer's property and can seize it through levy, all without prior judicial authorization.

A recent case that caught my eye highlights an unusual collection remedy: the writ of *ne exeat republica*, which bars a defendant from leaving the Court's jurisdiction. *United States v. Barrett*, 2014 U.S. Dist. LEXIS 10888 (D. Colo. Jan. 29, 2014). Stymied in its effort to seize the defendants' property to collect their past due taxes, the government essentially seized them instead.

Predictably, it takes some fairly serious misbehavior to lead a court to bar someone from traveling, and the Barretts' conduct fit the bill.

Mr. and Mrs. Barrett started out by filing a fraudulent tax return in 2008 that generated a refund of over \$215,000. When contacted by the IRS, they filed a corrected return in 2009, but kept the money. 2014 U.S. Dist. LEXIS 10888, slip op. at *1-*2. In 2010, the government filed an action alleging that the Barretts had spirited money out of the country. Although the government received a writ of *ne exeat republica*, the Barretts had departed for Ecuador. The government then received a default judgment and an order directing the Barretts to repatriate funds that they had wired to Ecuador. *Id.*, slip op. at *3-*4.

Subsequently, the Barretts returned to attend a daughter's wedding and were seized by the Marshall. After they turned over their passports, the focus became whether the writ should be vacated. Following an evidentiary hearing that outlined their assets, a magistrate judge recommended that the writ be discharged. The government objected.

After reviewing the available evidence (with some pointed barbs about the questionable credibility of the Barretts), the district court concluded that the writ should stay in place, although it narrowed its scope. Analytically, the court applied a multifactor test that considered the merits of the governments underlying tax claim, the relative harm to each party and the public interest to be served by the writ. *Id.*, slip op. at *17-*19. Ultimately, the court concluded that the Barretts had to stay put until they paid \$16,000 towards their tax debt and provided satisfactory proof that their Ecuadorean real estate truly could not be sold. *Id.*, slip op. at *26-*27.

Jim Malone is a tax lawyer in Philadelphia. © 2014, MALONE LLC.