

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:14-cv-166-TLW
	)	
JAMES C. DEW, JR. (a/k/a J. CHAPPELL	)	
DEW, JR., and JAMES CHAPPELL DEW,	)	
JR.), VERONICA W. DEW, and	)	
SOUTH CAROLINA DEPARTMENT OF	)	
REVENUE,	)	
	)	
Defendants.	)	

**PLAINTIFF’S RESPONSE TO MOTION TO STAY  
FILED BY VERONICA W. DEW**

The United States brought this action to reduce to judgment several unpaid federal income tax liabilities owed by defendants James C. Dew, Jr., and Veronica W. Dew and to foreclose federal tax liens securing those liabilities on real property owned by them. More specifically, the federal tax liabilities at issue, with amounts due and owing as of September 23, 2015, are as follows:

assessed against Mr. Dew individually for calendar years 1998, 1999, 2001, 2002, 2003, and 2004	\$424,353.34
assessed against Mrs. Dew individually for calendar years 1998, 1999, 2001, 2002, 2003, and 2004	\$ 41,821.88
assessed jointly against Mr. and Mrs. Dew for calendar years 2005-2007	\$ 31,225.06
assessed jointly against Mr. and Mrs. Dew for calendar year 2008, and not subject to the discharge granted to Mr. Dew	\$ 211.62

The Government moved for summary judgment. (ECF No. 73.) On May 28, 2015, Magistrate Judge Rogers issued a report and recommendation that the Government's motion for summary judgment be granted. (ECF No. 100.) Mr. Dew and Mrs. Dew each filed objections. (ECF Nos. 102, 104.) On August 26, 2015, the Court overruled the Dews' objections and granted summary judgment to the United States. (ECF No. 111.) The same day the Clerk entered a judgment. (ECF No. 112.) The Government has moved to alter or amend the judgment to provide specific monetary amounts of Mr. Dew's and Mrs. Dew's indebtedness and to set forth specific procedures for the foreclosure. (ECF No. 124.)

On July 15, 2015, Mrs. Dew filed an application for "innocent spouse" relief under § 6015 of the Internal Revenue Code. As the Government set forth in response to Mrs. Dew's objection to the magistrate's report (ECF No. 106), if a married couple files a joint return, the tax is computed on the couple's aggregate income and each spouse is jointly and severally liable for the tax. 26 U.S.C. § 6013(d). Congress, however, also established a means for one of the spouses to obtain certain types of relief from this liability. 26 U.S.C. § 6015. This Code section is colloquially referred to as the "innocent spouse" provision. *See, Jones v. Comm'r*, 642 F.3d 459, 460-61 (4th Cir. 2011). (ECF No. 106 at 6-9.)

In her response to the Government's motion to alter or amend, Mrs. Dew stated that this case should be stayed pending IRS consideration of her innocent spouse request. (ECF No. 126.) In its reply, the Government asserted that a request for a stay should be made by motion, rather than in response to another party's motion. (ECF No. 127.) The Government further reiterated that § 6015 is irrelevant to Mrs. Dew's individual income tax liabilities and to all of Mr. Dew's liabilities. If the IRS were to grant Mrs. Dew's application, she would only be relieved from her liabilities pertaining to the joint returns at issue. *Id.*; *see also* ECF No. 106.

Mrs. Dew has now moved for a stay. She refers to § 6015(e)(1)(B)(i), which states:

**(i) In general.**--Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or *prosecuted* against the individual making an election under subsection (b) or (c) or requesting equitable relief under subsection (f) for collection of any assessment to which such election or request relates until the close of the 90th day referred to in subparagraph (A)(ii), or, if a petition has been filed with the Tax Court under subparagraph (A), until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

(Emphasis added.)

The Government acknowledges that § 6015(e)(1)(B)(i) prevents this action from going forward to the extent that the Government seeks a monetary judgment against Mrs. Dew for the outstanding federal income tax liabilities pertaining to the joint returns that they filed. It is, however, impractical to stay only the portion of the action that seeks such a judgment. Rather than delay the case, the Government will shortly be moving to dismiss without prejudice the portion of the action that seeks a judgment against Mrs. Dew for the amount of federal income tax liability owed for the years for which the Dews filed joint returns.

The Government, however, does not concede that innocent spouse protection for the joint return years, if given to Mrs. Dew, would disturb the federal tax liens that have already attached *in rem* to the property at issue. The Court need not, however, decide that issue now because we do not know how much cash the foreclosure sale will yield.

As the Government explained in its memorandum in support of its motion for summary judgment, the federal tax liens securing Mr. and Mrs. Dew's unpaid federal tax liabilities, both separate and joint, attach to all property and rights to property that they own. 26 U.S.C. § 6321; *see* ECF No. at 73-1 at 10-12. Section 6321 "creates no property rights but merely attaches consequences, federally defined, to rights created under state law." *United States v. Bess*, 357 U.S. 51, 55 (1958); but once those rights are determined, federal law determines the priority of a

federal tax lien vis à vis other claims to the property. *Aquilino v. United States*, 363 U.S. 509, 513-14 (1960). Indeed, “it has long been an axiom of our tax collection scheme that, although the definition of underlying property interests is left to state law, the consequences that attach to those interests is a matter left to federal law.” *United States v. Rodgers*, 461 U.S. 677, 683 (1983).

Under South Carolina law, the Dews hold the subject property as tenants in common with a right of survivorship. *See Smith v. Cutler*, 623 SE 2d 644 (S.C. 2005). As the Supreme Court makes clear, the federal tax liens securing their individual liabilities may be enforced against the property. *Rodgers*, 461 U.S. 677 at 683; *United States v. Craft*, 535 U.S. 274 at 284, 288 (2002).<sup>1</sup>

Hence, the Court should order the foreclosure and sale of the property. The sale proceeds should be applied first to expenses of sale and then to Horry County, South Carolina, for real property taxes and other local assessments, if any, due and owing on the property. After that, the sale proceeds should be divided in half. One half of the proceeds should be paid to the United States to be applied to Mr. Dew’s unpaid individual federal income tax liabilities for the pre-2005 years, as well as his liability for the “joint return years.” Because Mr. Dew’s liabilities are so large, no excess can possibly remain from the portion of the sale proceeds encumbered by the liens securing his liabilities. The other half of the proceeds should then be applied to Mrs. Dew’s individual income tax liabilities for calendar years 1998, 1999, 2001, 2002, 2003, and 2004. If there is no excess after doing so, there will be no need to address whether the federal tax liens

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<sup>1</sup> This point of law was fully discussed in the Government’s memorandum in support of its motion for summary judgment. ECF No. 73-1 at 10-12.

securing Mrs. Dew's tax liability associated with the joint returns.<sup>2</sup> If, however, an excess remains, the parties may address at that time how those proceeds should be distributed.

Respectfully submitted,

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<sup>2</sup> The land records of Horry County, South Carolina, list the fair market value of the property at \$129,800. A foreclosure sale would be expected to yield a substantially lower amount. For there to be a need to reach the question of whether Mrs. Dew's request for innocent spouse relief affects the liens that have already attached to the property, the foreclosure sale would have to yield proceeds in excess of at least \$82,000 after payment of sale expenses and amounts, if any, owed for real property taxes or other local assessments. It is problematical whether that would occur.