

MLI
#7**Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax Under IRC § 7403****SUMMARY**

Internal Revenue Code (IRC) § 7403 authorizes the United States to file a civil action in U.S. District Court against a taxpayer who has refused or neglected to pay any tax, to enforce a federal tax lien, or to subject any of the delinquent taxpayer's property and rights to property to the payment of tax. Unlike cases in other Most Litigated Issues, lien enforcement cases are always initiated by the government through the Department of Justice rather than the taxpayer. We identified 39 opinions issued between June 1, 2017, and May 31, 2018, that involved civil actions to enforce liens under IRC § 7403. The IRS prevailed in 37 of these cases, one case was remanded for additional proceedings, and one case resulted in a split decision. The 39 cases identified for this reporting period represent a 35 percent decrease from the previous year.

TAXPAYER RIGHT(S) IMPACTED¹

- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

PRESENT LAW

If a taxpayer is delinquent in satisfying a federal tax liability, IRC § 7403 authorizes the United States to initiate a civil action in the appropriate United States District Court to enforce its federal tax lien over the liability or to subject any of the delinquent taxpayer's property, right, title, or interest in property to the payment of that liability.² When the United States files a complaint in district court to enforce a lien under IRC § 7403, it is required to name all parties having liens on, or otherwise claiming interest in the relevant property, as parties to the action.³ The law of the state where the property is located determines the nature of a taxpayer's legal interest in the property.⁴ However, once it is determined that the taxpayer has an interest under state law in the property, federal law controls whether the property is exempt from attachment of the lien.⁵

IRC § 7403(c) directs the court to “finally determine the merits of all claims to and liens upon the property,” and if the United States proves a claim or interest, the court may order an officer of the court to sell the property and distribute the proceeds in accordance with the court's findings with respect to the interests of the parties, including the United States' claim for the delinquent tax liability.⁶

1 See Taxpayer Bill of Rights (TBOR), <https://taxpayeradvocate.irs.gov/taxpayer-rights>. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 IRC § 7403(a); Treas. Reg. § 301.7403-1(a).

3 IRC § 7403(b).

4 *U.S. v. Nat'l Bank of Commerce*, 472 U.S. 713, 722 (1985).

5 *U.S. v. Rodgers*, 461 U.S. 677, 683 (1983).

6 IRC § 7403(c).

Ordering the sale of a taxpayer's property is a powerful collection tool and directly affects any parties who have an interest in the property subject to sale. Based on the Supreme Court case *United States v. Rodgers*, however, the court is not required to authorize a forced sale and may exercise limited equitable discretion. Under *Rodgers*, when a forced sale involves the interests of a third party who does not have a federal tax debt, the court should consider the following four factors when determining whether the property should be sold:

1. The extent to which the government's financial interests would be prejudiced if they were relegated to a forced sale of the partial interest of the delinquent taxpayer;
2. Whether the innocent third party with a separate interest in the property, in the normal course of events, has a legally recognized expectation that the property would not be subject to a forced sale by the delinquent taxpayer or taxpayer's creditors;
3. The likely prejudice to the third party in personal dislocation costs and inadequate compensation; and
4. The relative character and value of the non-liable and liable interests held in the property.⁷

In cases where the United States holds a first priority lien, it may offer bids at the sale of the foreclosed property up to an amount equal to the amount of the lien, plus selling expenses.⁸ If a foreclosure action is initiated by another creditor, IRC § 7403(c) authorizes the United States to intervene in the action to assert any interests from a lien on the property subject to such action.⁹

If the case was initiated in a state court, the United States may remove the case to a U.S. District Court.¹⁰ However, if the foreclosure action is adjudicated under state court proceedings, federal tax liens that are junior to other creditors may be effectively removed, even if the United States is not a party to the proceeding.¹¹ While the action is pending, the court may appoint a receiver empowered in equity to preserve and operate the property prior to the sale, upon the government's certification that it is in the public interest.¹²

The IRS must make the initial referral of a case to the Department of Justice (DOJ) and request the DOJ to file the foreclosure suit.¹³ The Internal Revenue Manual (IRM) provides procedures with respect to what actions the IRS must take before requesting that the DOJ commence a foreclosure proceeding.¹⁴ With respect to a recommendation to foreclose on a taxpayer's principal residence, there

⁷ *Rodgers*, 461 U.S. at 709-11.

⁸ IRC § 7403(c).

⁹ However, if the application of the United States to intervene is denied, the adjudication will have no effect upon the federal tax lien on the property. IRC § 7424. Under 28 U.S.C. § 2410, the United States may be named a party in any civil action or suit in any district court, or in any state court having jurisdiction of the subject matter.

¹⁰ 28 U.S.C. § 1444.

¹¹ *U.S. v. Brosnan*, 363 U.S. 237 (1960).

¹² IRC §§ 7403(d) and 7402(a).

¹³ IRC § 7401. The IRS prepares a suit recommendation package, and then the IRS Office of Chief Counsel reviews it, and if it agrees sends a letter to the Department of Justice (DOJ) asking the DOJ to commence the litigation. Chief Counsel Directives Manual, 34.6.1.1.1, *Steps Prior to Litigation* (Oct. 7, 2015).

¹⁴ Internal Revenue Manual (IRM) 5.17.4.8, *Foreclosure of Federal Tax Lien* (Aug. 1, 2010).

are special procedures that the IRS must follow before initiating a referral to DOJ.¹⁵ The IRM instructs the IRS to refer a case to DOJ to pursue a suit to foreclose only when there are no other reasonable administrative remedies and the foreclosure would not create or exasperate hardship issues for the taxpayer.¹⁶ Under IRM procedures, the IRS is required to take the following actions and describe the results in a suit recommendation narrative that accompanies the referral:

- Attempt to personally contact the taxpayer and inform them that a suit to foreclose the tax lien on the principal residence is the next planned action;
- Attempt to identify the occupants of the principal residence;
- Attempt to discuss administrative remedies with the taxpayer such as an offer in compromise (including Effective Tax Administration offer or an offer with consideration of special circumstances), when appropriate;
- Advise the taxpayer about TAS, provide Form 911, *Request for Taxpayer Advocate Assistance (and Application for Taxpayer Assistance Order)*, and explain its provisions;¹⁷ and
- Include a summary statement in the case history, along with the information on the taxpayer and the occupants of the principal residence, including children.¹⁸

ANALYSIS OF LITIGATED CASES

We reviewed 39 opinions issued between June 1, 2017, and May 31, 2018, that involved civil actions to enforce federal tax liens. Table 7 in Appendix 3 contains a detailed list of those cases. Of the 39 cases, taxpayers appeared *pro se* (without counsel) in 26 cases, and were represented in the remaining 13 cases. The IRS prevailed in all cases brought against taxpayers proceeding *pro se*.

Foreclosure of Tax Liens Where Non-Liable Taxpayer Had Interest in Property

In *United States v. Wilhite*, the government filed suit to collect long-outstanding restitution obligations by foreclosing on a company owned and controlled in part by the taxpayer.¹⁹ The taxpayer's restitution obligations stemmed from years of unpaid tax from fraudulent transfers, creating an enforceable federal

15 IRM 5.17.4.8.2.5, *Lien Foreclosure on a Principal Residence* (Jan. 8, 2016). In 2012, TAS issued an Advocacy Proposal to the IRS recommending that the IRS consider the negative impact on the taxpayer of a suit to foreclose on a principal residence prior to forwarding the case to the DOJ. TAS, *Memorandum for Director, Collection Policy* (Aug. 20, 2012). The National Taxpayer Advocate followed this advocacy proposal with a legislative recommendation that Congress amend IRC § 7403 to require that the IRS, before recommending that DOJ file a suit to foreclose, first determine whether the taxpayer's other property or rights to property, if sold, are insufficient to pay the amount due, and that the foreclosure and sale of the residence will not create an economic hardship due to the financial condition of the taxpayer. National Taxpayer Advocate 2012 Annual Report to Congress 537-43 (Legislative Recommendation: *Amend IRC § 7403 to Provide Taxpayer Protections Before Lien Foreclosure Suits on Principal Residences*). Following this recommendation, TAS worked closely with the IRS to develop an Internal Guidance Memorandum (IGM), which was incorporated into IRM 5.17.4.8.2.5 on March 30, 2015, to address the issues raised by the National Taxpayer Advocate. Prior to the release of the IGM in 2013, the IRM provisions relating to referring cases under IRC § 6334(e)(1) required the IRS to consider who is living in the residence in determining whether referral to DOJ was appropriate but the procedures under IRC § 7403 did not.

16 IRM 5.17.4.8.2.5, *Lien Foreclosure on a Principal Residence* (Jan. 8, 2016); See Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*, *supra*.

17 If the taxpayer indicates that the planned foreclosure of the principal residence would create a hardship, the Revenue Officer (RO) will assist the taxpayer with the preparation of Form 911 and forward the form to the local TAS office if the RO cannot or will not provide the requested relief.

18 IRM 5.17.4.8.2.5, *Lien Foreclosure on a Principal Residence* (Jan. 8, 2016).

19 *U.S. v. Wilhite*, 2018 U.S. Dist. LEXIS 42318 (D. Colo., Mar. 14, 2018), *appeal docketed*, No. 18-1090 (10th Cir., Mar. 15, 2018).

tax lien which attached to the taxpayer's property, including his ownership interest in the company.²⁰ The taxpayer and his wife, a non-liable third party, jointly owned the company with an equitable interest of 73.9 percent and 26.1 percent, respectively.²¹

Having found the federal tax lien valid and that it attached to the taxpayer's equitable interest in the company, the court analyzed the *Rodgers* factors described above to determine the appropriateness of a forced sale of the company in its entirety, rather than a sale of just the portion owned by the taxpayer.

With respect to the first *Rodgers* factor, the court concluded that the partial sale of the company would prejudice the government's financial interest because no potential buyer would be likely to pay fair market value for a majority interest in the taxpayer's family-owned company, especially when one of the family members would remain heavily involved in the business.²² Furthermore, the court noted that selling the taxpayer's interest at discounted price or not selling it at all would impede the government's right to collect on the taxpayer's outstanding restitution obligations.²³ Thus, the court found this factor weighed in favor of a sale of the company in its entirety.

With respect to the second *Rodgers* factor, the non-liable party's legally recognized expectation that the property would not be subject to a forced sale, the court determined that any belief held by the wife that the property would not be subject to a forced sale was unfounded. The court reasoned that the taxpayer's wife had knowledge of the taxpayer's outstanding tax liability from the point when the government publicly recorded the lien in 2001.²⁴ The court also noted that the taxpayer's wife was involved in activities to hinder and defraud the government from collecting the outstanding liability by starting the company and hiding the taxpayer's involvement in the company.²⁵ With such knowledge and involvement, the court concluded that the taxpayer's wife failed to present any legally cognizable expectation that her ownership interest would be protected from the sale.²⁶ Therefore, this factor also weighed in favor of a sale.

In addressing the third *Rodgers* factor, the likely prejudice to the third party in personal dislocation costs and inadequate compensation, the court recognized that the taxpayer's wife may suffer some prejudice. However, the court concluded that government's right to force the sale and collect the taxpayer's outstanding debt outweighed the minimal burden the wife would experience. Even if a sale would affect the wife's monthly income, she would be given the opportunity to make a bid at the foreclosure sale to protect her interests, or in the alternative, be adequately compensated after the sale in proportion to her interest in the company.²⁷ Thus, this factor still weighed in favor of a sale.

Finally, with respect to the fourth *Rodgers* factor, the relative character and value of the liable and non-liable party's possessory interest in the subject property, the court noted that the taxpayer was the true

20 Taxpayer's restitution obligation imposed under the *Mandatory Victim's Restitution Act (MVRA)* created a federal lien. See 18 U.S.C. §§ 3663A; 3613. In this case, the government's action to enforce its lien is "in every real sense a proceeding in court to collect a tax." *Willhite*, 2018 U.S. Dist. LEXIS 42318, at *3. The court previously found that under Colorado law, the taxpayer had a 73.9 percent ownership interest in the company, which was subject to the federal tax lien.

21 *Id.* at *2.

22 *Id.* at *9-10.

23 *Id.* at *10.

24 *Id.* at *10-11.

25 *Id.* at *11.

26 *Id.*

27 *Willhite*, 2018 U.S. Dist. LEXIS 42318, at *11-12. The court determined that government holds a first priority lien superior to other creditors.

beneficial owner, despite his wife's minority interest, because he controlled and operated the company.²⁸ Considering all the factors presented in this case, the court held that a forced sale of the entire company was appropriate.²⁹

Preservation of Federal Tax Lien Against Subsequent Purchasers of Property

If a person who owes a federal tax liability fails to pay after the IRS sends notice and demand for payment, then a lien arises in favor of the government upon all property or rights to property, whether real or personal, belonging to that person.³⁰ The Supreme Court has broadly interpreted this provision to apply to every interest the taxpayer may have in real property.³¹ A federal tax lien arises automatically at the time an assessment is made, and continues until the assessed tax liability is satisfied or becomes unenforceable by reason of lapse of time.³² In most cases, the “transfer of property subsequent to the attachment of the lien does not affect the lien,” which remains attached to the property regardless of ownership.³³ However, a lien will not be enforced against a subsequent purchaser of property if the purchaser acquires an interest without notice.³⁴ Notice includes “constructive notice,” which is determined by asking whether a reasonable and diligent inspection of the relevant local index would reveal the existence of the lien.³⁵

In *United States v. Z Investment Properties, LLC*, the government sought to satisfy the federal tax liabilities owed by a taxpayer by enforcing a federal tax lien against a parcel of real property (hereinafter “the Property”) at that point owned by a third party.³⁶ Carroll Raines, the taxpayer, initially owned the Property with his wife, becoming the sole owner upon her death. In 2007, the IRS notified the taxpayer it had made an assessment against him for unpaid federal income taxes, penalties, and interest. In August 2010, the taxpayer's liabilities remained unpaid and the IRS filed a notice of federal tax lien in the county where the taxpayer owned the Property, which indicated that federal tax liens attached to all property and rights to property belonging to the taxpayer, including the Property. The notice filed by the IRS incorrectly spelled the taxpayer's first name, listing it as “Carrol” V. Raines instead of “Carroll” V. Raines.³⁷

The taxpayer died intestate in 2009, and his son recorded an Affidavit of Heirship over the Property in November 2010. That month, all six of the taxpayer's heirs conveyed their interests in the Property through a quitclaim deed of trust to a land trust, one of the third-party defendants in this case. A search of the taxpayer's exact first and last name on the local recorder's electronic database would not have revealed the federal tax liens, but did display potential aliases, including “C V Raines” and “Carol

28 *Willhite*, 2018 U.S. Dist. LEXIS 42318, at *12.

29 The court also granted the government's request under IRC § 7403(d) for a receiver noting that the government had made a prima facie showing that a substantial tax liability exists and that the government's collection efforts may be jeopardized if a receiver is not appointed. *Id.* at *15.

30 IRC § 6321.

31 *U.S. v. Nat'l Bank of Commerce*, 472 U.S. 713, 719-20 (1985).

32 IRC § 6322. The lien remains in effect until the limitations period for collection of the tax expires, which is generally 10 years from the assessment date. See IRC § 6502.

33 *U.S. v. Bess*, 357 U.S. 51, 57 (1958).

34 IRC § 6323(a), (h)(6).

35 See *In re Sparring Tool & Mfg. Co.*, 412 F.3d 653, 656 (6th Cir. 2005) (internal quotation marks omitted); see also *Tony Thornton Auction Serv., Inc. v. U.S.*, 791 F.2d 635, 639 (8th Cir. 1986)

36 *U.S. v. Z Investment Properties, LLC.*, 121 A.F.T.R.2d (RIA) 1317 (N.D. Ill. 2018), *appeal docketed*, No. 18-1915 (7th Cir. Apr. 26, 2018).

37 *Z Investment Properties, LLC.*, 121 A.F.T.R.2d (RIA) at *1.

Raines.”³⁸ A search for all last names beginning with “Raines” and first names beginning with “C” also would have revealed the existence of the liens, as would a “Sounds Like” search using the taxpayer’s first and last names.³⁹

The court held that the minor misspelling in the notice of federal tax lien did not bar the enforcement of the lien. To find otherwise, the court stated, would impose a requirement that tax liens identify a taxpayer with absolute precision, which would unduly burden the government’s tax collection ability.⁴⁰ The court emphasized the availability of multiple, easily-executed and low-cost search options available on the local recorder’s website raised the standard for what constitutes a “reasonable” search.⁴¹ The court also noted that the exact search of the taxpayer’s name revealed the alias, “Carol” V. Raines, actually used on the Notice of Federal Tax Liens. In such circumstances, the court held that “a reasonable search demands that the searcher act upon the notice of aliases provided by that initial search, for example by using one of the other, flexible search functions” available on the local reporter.⁴² The court found the lien valid and enforceable. Finally, the court allowed the government to enforce the federal tax lien against the Property and sell the Property free and clear of all rights, titles, claims, and interests of the parties. This case shows the power of a lien as a collection tool and highlights the importance for taxpayers to exercise caution when transferring title to real property.

Foreclosure of Tax Liens Against Property Held by a Taxpayer’s Nominee or Alter Ego

The number of opinions that involved foreclosure of federal tax liens against property titled in the name of a taxpayer’s nominee or alter ego showed an increase over last year, with 23 cases in 2018, compared to 15 in 2017. A nominee is one “who holds bare legal title to property for the benefit of another.”⁴³ Courts typically look at the following factors to assess whether an entity, trust, or a third party is a nominee of a taxpayer:

- The nominee paid no or inadequate consideration;
- The property was placed in the name of the nominee in anticipation of the tax debt or litigation while the transferor retained control;
- There is a close relationship between the transferor and the nominee;
- The parties to the transfer failed to record the conveyance;
- The transferor retained possession (or control); and
- The transferor continues to enjoy the benefits of property.⁴⁴

Courts have also noted that the government is not required to prove the existence of each factor, and that no single factor is determinative.⁴⁵ Of the nominee factors, the courts routinely attach greater weight and importance to the taxpayer’s control of the assets.⁴⁶

38 *Z Investment Properties, LLC.*, 121 A.F.T.R.2d (RIA) at *2.

39 *Id.*

40 *Id.* at *6.

41 *Id.*

42 *Id.*

43 Nominee, BLACK’S LAW DICTIONARY (10th ed. 2014). See also *U.S. v. Beeman*, 108 A.F.T.R.2d (RIA) 5074 (W.D. Penn. 2011).

44 See, e.g., *U.S. v. Balice*, 120 A.F.T.R.2d (RIA) 5444 (D. N.J. 2017), appeal docketed, No. 18-2528 (3d Cir. July 11, 2018). See also *U.S. v. Kraus*, 121 A.F.T.R.2d (RIA) 1323 (W.D. Wash. 2018), appeal docketed, No. 18-35516 (9th Cir. June 18, 2018).

45 *Dalton v. C.I.R.*, 682 F.3d 149, 158 (1st Cir. 2012).

46 *Shades Ridge Holding Co. v. U.S.*, 888 F.2d 725, 728; *U.S. v. Novotny*, 88 A.F.T.R.2d (RIA) 7194, at *2 (D. Colo. 2001).

In *United States v. Wade*, the government filed suit to collect a taxpayer's outstanding federal tax liabilities for tax years 1993 through 2004 by foreclosing tax liens against taxpayer's interest in 19 real properties.⁴⁷ Taxpayer transferred his ownership interests in some of those properties to sham entities and trusts after he was convicted for tax evasion. In 2004, he transferred all other ownership interests to his wife by a way of gift.⁴⁸ In its motion for summary judgment, the government argued that the purported gift the taxpayer made to his wife was invalid and that the entities and trusts with ownership interests in the subject properties were mere nominees of the taxpayer.

The taxpayer had an outstanding tax liability and a valid tax assessment against him for tax years 1982 to 1984; however no formal tax assessment had been made for tax years 1993 to 2004 at the time of the alleged gift.⁴⁹ The taxpayer argued that the lien was invalid because the IRS had not made a formal tax assessment for the subject years, and he had made a proper gift of all his interests to his wife. However, even though there was no formal tax assessment, the court noted the taxpayer nevertheless still owed millions of dollars in unpaid federal income tax, making the government his creditor. Furthermore, the court noted that the taxpayer's transfer of his assets as a "gift" to his wife occurred after this liability had accrued, indicating the transfer was an intentional action to hinder, delay and defraud the United States.⁵⁰ Thus, the court found that the taxpayer had an outstanding tax liability for the tax years at issue and set aside the alleged gift to his wife as a fraudulent transfer under state law.

With respect to all the properties held by other alleged third-party entities and business trusts, the court applied the nominee factors mentioned above to determine whether the current legal titleholders were nominees of the delinquent taxpayer. First, the court noted that the taxpayer conceded that he transferred his interests in all properties to various entities and business trusts for inadequate consideration.⁵¹ Second, the taxpayer transferred the properties after incurring an outstanding tax liability and intentionally and continuously failing to report his true taxable income.⁵² The court stated that the taxpayer should have known that he could incur additional federal tax liability. Therefore, the first two factors clearly weighed in favor of government.

The court did not fully analyze the existence of the close relationship and the failure to record the conveyance, the third and fourth factors to determine nominee status. Instead, the court put greater focus on the fifth and sixth factors — the taxpayer's continued control and enjoyment of the benefits of the subject property. The court emphasized that the taxpayer clearly retained control of the property after the transfers because he continued to exercise the dominion over the properties and even continued operating an apartment rental business on them.⁵³ Moreover, the taxpayer continued to benefit from the property. He maintained a 50 percent ownership interest in the subject properties, as the partnership income distributions were still directed to the taxpayer. Based on all these factors, the court found that the legal title holders of the 19 properties were merely taxpayer's nominees, and thus, the government's liens validly attached to the subject properties.⁵⁴ The court granted the government's motion for summary judgment to enforce the tax lien against all 19 of the subject properties.

47 *U.S. v. Wade*, 120 A.F.T.R.2d (RIA) 6004 (D. Utah 2017), *appeal docketed*, No. 18-4140 (10th Cir., Sept. 28, 2018).

48 *Id.* at *6.

49 *Id.* at *9-10.

50 *Id.* at *13-14.

51 *Id.* at *21.

52 *Id.* at *22-23.

53 *Id.* at *23.

54 *Id.*

In another nominee case, *Arlin Geophysical v. United States*, the Circuit Court of Appeals for the Tenth Circuit held that a federal tax lien could not be enforced against a property allegedly held by the taxpayer's nominee because the taxpayer and third party were not provided a meaningful opportunity to defend against the government's position.⁵⁵ The appellate court found the district court erred in basing its determination of the third party's nominee status on findings from a related dispute to which the taxpayer and third party were nonparties.⁵⁶ Thus, the appellate court vacated the judgment and the order of sale and remanded the case for further proceedings.⁵⁷

CONCLUSION

Lien enforcement cases continue to be a consistent source of litigation between the government and taxpayers. After peaking at 278 cases in 2012, the number of IRS lien enforcement cases received by the Department of Justice decreased to 215 in fiscal year (FY) 2013 and remained fairly constant in the years following.⁵⁸ In recent years, the number of cases received has fluctuated greatly, as the number of lien cases received increased by about five percent to 223 cases in FY 2017. However, in FY 2018, the number of cases received decreased to just 200, over a 10 percent decrease.⁵⁹ The 200 cases received is the lowest amount since FY 2011 and could explain why fewer lien cases were litigated during our reporting period. This trend is shown in Figure 3.7.1.⁶⁰

55 *Arlin Geophysical v. U.S.*, 696 F. App'x 362 (10th Cir. 2017), *vacating and remanding* No. 2:08-cv-00414-DN (D. Utah Sept. 17, 2015). The court acknowledged that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Arlin*, 696 F. App'x 362, 368 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). See also Nina E. Olson, 2010 Erwin N. Griswold Lecture Before the American College of Tax Counsel, *Taking the Bull by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection*, 63 *Tax Law.* 227 (Spring 2010).

56 *Arlin Geophysical v. U.S.*, 696 F. App'x 362, 371.

57 *Id.* In this case, the taxpayer's subject property was sold at a judicial execution sale on May 24, 2017. While this case primarily involves the interests of the third party, we have chosen to include and highlight this case because it highlights how the rights of a taxpayer are frequently tied to the rights of a third party in nominee cases. On remand, the lower court granted the government's Motion for Summary Judgment, finding that the "undisputed material facts demonstrate that Fujilyte held title to the Properties as Worthen's nominee" and that "the United States is entitled to the funds on deposit in the court registry." *Arlin Geophysical & Laura Olson v. U.S.*, 2018 WL 4621748 (D. Utah 2018).

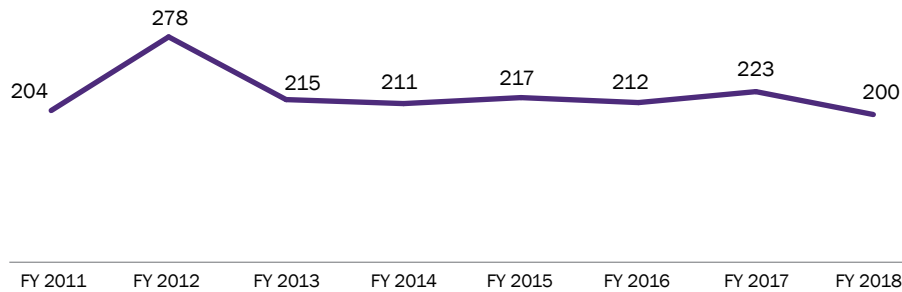
58 National Taxpayer Advocate 2016 Annual Report to Congress 496 (FY 2010 to FY 2016).

59 DOJ Tax Division, *Suits to Foreclose Tax Lien – Summary by Fiscal Year of Case Receipt* (Oct. 2018).

60 *Id.*

FIGURE 3.7.1

Liens Cases Referred to U.S. Department of Justice



The reduction in cases received by the DOJ could be attributable in part to the IRS’s 2016 decision to refer fewer suits to foreclose tax liens on taxpayers undergoing a hardship or in situations where there are reasonable alternatives.⁶¹ The National Taxpayer Advocate continues to urge Congress to adopt her 2012 recommendation to codify the approach used in the IRM so it cannot be reversed administratively.⁶² In addition, the National Taxpayer Advocate recommends revising IRS guidance to instruct employees to more thoroughly consider the negative impact of foreclosing a principal residence.⁶³ The National Taxpayer Advocate suggests the use of an algorithm to better identify economic hardship cases early in the case selection process, which will help the IRS work with those taxpayers to find collection alternatives other than lien enforcement and foreclosure.⁶⁴

Nominee cases represented 56 percent (23 out of 39) of lien cases seen in this reporting period. To address taxpayer burden and enhance the taxpayer *rights to privacy, to a fair and just tax system, and to appeal the IRS’s decision in an independent forum*, the National Taxpayer Advocate has also recommended that Congress amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to “affected third parties,” known as nominees, alter egos, and transferees, who hold legal title to property subject to IRS collection actions.⁶⁵

61 See IRM 5.17.4.8.2.5, *Lien Foreclosure on a Principal Residence* (Jan. 8, 2016).

62 National Taxpayer Advocate 2012 Annual Report to Congress 537-543 (Legislative Recommendation: *Amend IRC § 7403 to Provide Taxpayer Protections Before Lien Foreclosure Suits on Principal Residences*).

63 See National Taxpayer Advocate 2012 Annual Report to Congress 544-552 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*).

64 See Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*, *supra*.

65 National Taxpayer Advocate 2012 Annual Report to Congress 544-552 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*).