

2022 NATIONAL INCOME TAX WORKBOOK

CHAPTER 8: TAX PRACTICE AND
PROCEDURE – PT. 2 P. 310



TRANSFEREES, NOMINEES & ALTER EGOS

P. 310 - 311

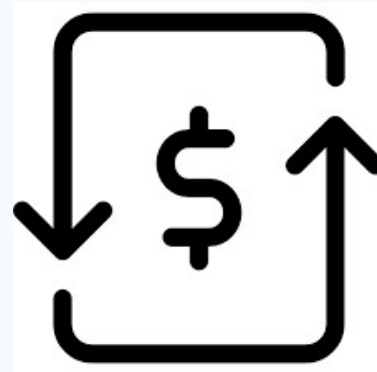
Who can be liable for unpaid tax?

Follow the money & property --

Property still exists,

Held by someone else

Or comingled assets



Transferee – receives property for < adequate consideration
from TP who has tax liability

Heir/distributee of estate

S/H of dissolved corp

Donee

Corp successor

Party to reorg

Other distributees – personally liable

Property Transfers

Some must occur after accrual of tax liability – last day of tax period

Less than adequate consideration

Transferee is insider with reason to believe transferor insolvent

Ex. 8.7 Corp paid debt to shareholder but not tax liability

TRANSFEREE LIABILITY

PP. 311-312

List of direct and indirect transfers

- Disposition of asset/interest in asset
- Payment of money or debt, lease
- Compensation , distribution to SH
- Sham transaction



Source of Liability

Based on law or equity – fraudulent conveyance, trust fund doctrine

Transferee/fiduciary notice -w/in 90 days can petition Tax Court

IRS assesses if court decision, default, or agreement

IRS files lien and collects

Statute of Limitations on Assessment

Generally, within 1 year after Transferor SOL expiration

SOL suspended during 90-day assessment and while court action pending

Estate & Gift Tax Transferee Liability – Limited to FMV of property

PR Personally liable – other estate debts paid 1st – and tax nonpayment

TRANSFEE DEFENSES AGAINST LIABILITY

- 1) Transferor paid the tax and waived right to refund
- 2) Transferor does not owe the tax
- 3) SOL expired
- 4) Transferred property returned
- 5) IRS has not exhausted collection efforts against transferor

NOMINEES & ALTER EGOS

PP. 314-315

Nominee = individual/entity auth. to act on behalf of someone else

- 1) TP previously owned the property
- 2) Nominee paid < adequate consideration
- 3) TP retains control
- 4) TP uses property
- 5) TP pays property expenses
- 6) Tax avoidance transfer

IRS issues Notice of Federal Tax Lien to nominee

ALTER EGO

Legally - Entity separate from T/P

Factually – Entity **not separate** from T/P

- | | |
|----------------------------------|------------------------------|
| 1) Co-mingling of funds | 4) Corp.
undercapitalized |
| 2) Unsecured interest free loans | 5) No corp.
formalities |
| 3) SH has substantial control | 6) Unjust or unfair |

IRS treats as one for tax collection- alter ego liable

AMENDED VS. SUPERSEDING RETURNS

P. 317

Once a return is filed, statute begins unless it is before the due date plus extensions

Change of election or change of tax position (more income)

Before due date – superseding return

Superseding Return-filed during filing period

Amended Return-filed after filing period

Reasons to Amend

Change filing status, correct income, deductions, credits, elections, change IRS amounts, claim a carry back

Statute of Limitations

General – assess **w/in 3 years**, credit or refund filing w/in later of 3 yrs. from orig. return filed or **2 yrs. after tax paid**

Amended return does not change SOL

Superseding return filed on or before original due date deemed filed on due date

Superseding return filed during extension period does not change SOL

May need transcript

When to file

- Wait until original return processed
- Note – file earlier if necessary to avoid penalties/interest

File w/in SOL period

How to file

Form 1040-X; limited 1045 filing

Electronically file if 2019 or later & orig. filed electronically

Deceased T/P – write “deceased” and date of death

Surviving spouse or PR signs - May need Form 1310

Tracking Amended Return – online tool or call, processing delays

Claim of Right Adjustment – T/P reported income, later determines no right to income-files claim, deduction exceeds \$3K

Decrease is treated as payment for prior tax year and refunded

Ex. 8.9 Robert gave refund to resolve dispute, file from 1045 to claim overpayment

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SUPERSEDING RETURNS

PP. 321-324

Filed– To correct an error or change a tax election. **Must be filed before end of filing due date (w/extensions)**

Check software for box to check for this type of return

Some binding elections must be filed by the **original due date** of the return (not including extensions, e.g. changing filing status).

Planning Pointer-P.322

SUPERSEDING RETURNS

PP. 320-321

Note - Superseding return to make or revoke election

SOL assessments 3 years after return filed (deemed filed on due date if filed before)

SOL refunds **Later** 3 yrs. return filed or 2 yrs. after tax paid

Superseding return does not extend SOL (Chief Counsel Memo 202026002)

Ex. 8.10, Emma filed superseding return 8/26/22 –SOL runs **6/4/22** (date original filed return)

Paper file – write “SUPERSEDING RETURN”

E-file – new check box for 1040

Superseding Corporate Returns

Note request extension when filing superseding return may be anticipated