Current Federal Tax Developments

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SECTION: SCAMS
IRS RESTARTS IP PIN PROGRAM THAT WAS SHUT DOWN AFTER FINDING 800 FRAUDULENT RETURN FILINGS ATTEMPTED WITH REISSUED PINS

Citation: "IRS Statement on IP PIN", 7/19/16

The problem of security and tax refund fraud unfortunately continues to create new developments, and this time the issue involved the IRS's online IP PIN recovery system. The IRS in March of 2016 announced it was shuttering the online IP PIN recovery system in an announcement posted on its website. The site was reopened four months later ("IRS Statement on 'Get an IP PIN' Tool")

On March 1, 2016, Brian Krebs (an IT security journalist whose writing we are referring to all too often in tax matters recently) posted a story describing a CPA who had her own IP PIN hijacked by unauthorized parties ("Thieves Nab IRS PINs to Hijack Tax Refunds"). The story went on to discuss the flaws inherent in the IRS's online IP PIN recovery process, a criticism Brian had leveled at the system back when the online transcript breaches took place last year, noting the IP PIN system used the same type of "identity confirmation" as that system.

Tax Analysts' Tax Notes also published a similar story on the weakness of this program on February 26 ("*IRS ID Theft PINs Too Easy to Obtain Online, Observers Warn*", Tax Notes Today, 2016 TNT 38-5, February 28, 2016), citing practitioner and TIGTA concerns about the ease of getting new numbers issued. In that story the IRS defended the use of the same system of "protection" to allow the reissuance of IP PIN by noting:

> The IRS challenged that comparison in a separate statement, telling Tax Analysts on February 25, "There is a fundamental difference between the Get Transcript and the IP PIN applications," because the latter does not disclose any personally identifiable information.

As Brian Krebs notes in his article discussing the suspension "...[T]his may be of small solace to taxpayers who had their tax and income data stolen directly from the IRS in the first place." ("IRS Suspends Insecure 'Get IP PIN' Feature")

Frankly, it's also not comfort either to the much larger number of taxpayers who had their information compromised elsewhere and then had became victims of refund related identity theft.

The March announcement stated that the IRS has detected 800 attempts to file a return using a fraudulently obtained replacement IP PIN, prompting the shut-down of the online recovery program. It notes that about 5% of the 2.7 million who have been issued IP PIN ended up going online to recover their PINs.

The IRS has now moved to reopen the program, using the same more stringent authentication requirements that it required when it reopened the program to get a transcript online.

The notice describes what taxpayers who are trying to retrieve an IP PIN online will now need to possess:

> Taxpayers must verify their identities using a more rigorous Secure Access process that requires them to have immediate access to an email address, account information from a credit card or other loans types and a text-enabled mobile phone. New and returning users must follow the Secure Access steps outlined in Fact Sheet 2016-20, How to Register for Get Transcript Online Using New Authentication Process.

Note that the mobile phone in question, under the transcript program, was required to be a phone on a post-paid plan, and not a prepaid phone plan. The latter type of plan is the only one generally offered by entities that resell access to cellular towers ("mobile virtual network operators"), including such entities that are controlled by larger post-paid services. Prepaid operators generally do not run credit checks on their customers and the IRS appears to have determined that it would be possible for those perpetrating the frauds to obtain phones in the names of the intended victims.

The downside, of course, is that identity theft victims that are using MVNO services (such as Google's Project Fi or Cricket) will not be able to use the IP PIN online retrieval system. As well, it is reasonable to expect that many taxpayers will be unable to provide the information requested to prove their identity. Thus advisers should remind clients who receive an IP PIN or who are likely to receive them (having been tax ID theft victims) that they need to be sure to retain the IP PIN mailed to them, as if they lose it the processing of their next tax return may be delayed significantly.

SECTION: SCAMS
IRS WILL SEND LETTER TO TAXPAYERS BEFORE MAKING PHONE CONTACT FOR FEDERAL TAX DEPOSIT ALERTS

Citation: SBSE Memo SBSE-05-0716-0035, 7/18/16

In SBSE Memo SBSE-05-0716-0035 the IRS announced a change in procedure related to contacting taxpayers for federal tax deposit (FTD) alerts. Now the IRS will not make phone contact on the matter until a notice of alert is mailed to the affected taxpayer that they will be contacted by phone by the IRS within 15 days.

Fraudulent calls from individuals claiming to be from the IRS has become a major problem, making it very difficult for taxpayers to recognize legitimate phone contacts from the IRS. Unfortunately, one of the reasons why the frauds are effective is because the IRS has resorted to phone contact of taxpayers in the past as initial contacts in certain situations.

Slowly the agency is beginning to recognize that continuing this practice represents a problem, since taxpayers can't simply be told the IRS won't contact them by phone without first having contacted the taxpayer otherwise. This change represents the second such change to procedures in 2016 by the IRS to eliminate a first contact via phone, after earlier eliminating the practice of making initial exam contact by phone.

The memorandum, which was effective immediately upon publication, provides:

> Field contact is the preferred method of contact on assigned FTD Alerts. However, Revenue Officers retain the discretion to determine the best method of effective initial contact on a case-by-case basis. Effective immediately, all anticipated telephone initial contacts on FTD Alert taxpayers can proceed **AFTER** a notice is sent to the taxpayer informing them that a Revenue Officer (RO) will contact them by phone within 15calendar days of receipt of the FTD Alert.

The "Quick Alert" the ROs will send is described as follows in the memorandum:

> The "Quick Note" should include the following information: (RO's can cut/paste this verbiage directly into the quick note).
>
> > *Dear [Taxpayer Name]:*
> >
> > *We noticed a decrease in your current quarter federal tax deposits (FTD) and are contacting you to ensure you are meeting your deposit requirements. We are sending you this notice to inform you that a Revenue Officer will either call you or visit your place of business to discuss these discrepancies.*
> >
> > ***Your responsibility as an employer***
> >
> > *Trust fund tax is money an employer withholds from employees' wages for income tax and FICA (social security and Medicare tax). As the employer, you must withhold trust fund taxes from employees' wages. These taxes are held in trust until paid to the Department of the Treasury by making periodic federal tax deposits.*
> >
> > ***Penalty for failing to deposit timely***

> *If the taxes are not deposited as required, we may assess penalties of up to 10 percent of the amount not deposited, depending on the number of days the federal tax deposits are late. If the taxes are still unpaid when Form 941, Employer's QUARTERLY Federal Tax Return, is filed, we will assess interest and penalties on any unpaid balance. The percentage may rise to 15 percent for amounts still unpaid after the date of the first notice asking for payment.*

While the example "quick note" also notes that a Revenue Officer might visit the taxpayer, the memorandum indicates that the quick note is not required prior to such a visit.

The note also indicates that the notice will go to a representative if there is a valid Form 2848, *Power of Attorney and Declaration of Representative* or Form 8821, *Tax Information Authorization* on file for the taxpayer in question.

The IRS does plan to incorporate the guidance found in the memorandum into the Internal Revenue Manual at IRM 5.7.1, *Trust Fund Compliance—FTD Alerts*, within one year.

SECTION: 167
OWNERSHIP OF OIL AND GAS PROPERTIES NOT REQUIRED TO CLAIM BENEFIT OF §167(H) FOR GEOLOGICAL AND GEOPHYSICAL EXPENSES

Citation: CGG Americas, Inc. v. Commissioner, 147 TC No. 2, 7/21/16

The IRS argued before the Tax Court that in order to be treated as incurring "geological and geophysical expenses" that are eligible for preferential treatment under IRC §167(h) the taxpayer must actually own oil and gas interests. However the Tax Court did not accept that view, allowing the treatment to the taxpayer in the case of *CGG Americas, Inc. v. Commissioner*, 147 TC No. 2.

IRC §167(h) provides the following:

> (h) Amortization of geological and geophysical expenditures
>
> (1) In general
>
> Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

The taxpayer in this case conducted marine surveys of the Outer Continental Shelf using geophysical techniques that suggested the presence of oil and gas in the areas. The taxpayer obtained raw acoustic data and then processed the data to create maps of the area below the earth's surface. It then licensed such data to customers engaged in oil and gas development. These customers had no use for the data other than for the exploration, development and production of oil and gas in the area.

The IRS noted, though, that the taxpayer did not actually own any oil and gas properties and argued the special treatment under §167(h) is strictly limited to taxpayers that actually owned such properties. The IRS heavily relied upon information in the legislative record created upon the enactment of §167(h), pointing out that Congress intended to free up capital for oil and gas exploration by those owning such properties by allowing the rapid write off. This means the expenses do not meet the definition of "geological and geophysical expenses" found in §167(h) in the IRS's view.

The Tax Court, however, notes that what Congress put in the law is what controls, not what they may or may not have intended, noting:

> Accepting that Congress intended section 167(h) to apply to owners of mineral interests, this does not dispose of the question of whether nonowners are governed by section 167(h). Congress's principal concern when it enacted section 167(h) may have been owners. But that does not mean that section

> 167(h) covers owners and no other types of taxpayers. A law can achieve effects different than those that Congress principally intended to achieve in enacting the law. As the Supreme Court held in *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998), "[i]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." Id. at 79.

The IRS argued, in the alternative, that even if they were “geological and geophysical expenses” as defined in §167(h), they were not incurred “in connection with the exploration for, or development of, oil or gas” since the taxpayer itself did not undertake such work—it merely provided data that could be used by taxpayers actually involved in such work.

The Tax Court also rejected this view:

> The surveying done by CGGA was integral to the process of finding oil and gas deposits. CGGA conducted the surveys, which detected or suggested the presence of oil and gas, in order to license the resulting data to customers that used the data to drill for oil and gas. Without CGGA’s performing the surveys, CGGA’s customers would have had to do the surveys themselves. The relationship between the surveys and oil and gas exploration is sufficient for us to conclude that the costs of the surveys borne by CGGA were incurred in connection with the exploration for, or development of, oil and gas.

The case provides insight into the limited usefulness of legislative history when interpreting a statute. Generally such history is only useful in interpreting a clear ambiguity in the law. In this case Congress could have easily inserted language requiring ownership of oil and gas properties to use this provision but failed to do so, either in the initial law or at any time after enactment. That silence was read by the Tax Court as allowing the taxpayer in this case to claim the benefit of §167(h). If Congress does not agree with that result, the Court’s view is that Congress should act to make the ownership requirement explicit.

SECTION: 355
TWO SAFE HARBORS OUTLINED FOR ACQUISITION OF CONTROL TRANSACTIONS FOR §355 DISTRIBUTIONS

Citation: Revenue Procedure 2016-40, 7/18/16

The IRS issued a revenue procedure (Revenue Procedure 2016-40) that provides for two safe harbors for transactions of a corporation meant to result in a tax free spin-off pursuant to IRC §355.

Specifically the ruling provides that if one of the safe harbors is met, the IRS will not challenge whether a distributing corporation’s acquisition of control of a subsidiary through issuance of additional stock by the subsidiary lacked substance when there is a post distribution transaction by the formerly controlled corporation that restores the shareholders to their effective interests before the issuance of that stock.

IRC §355 generally provides for tax free spin-offs from corporations if certain conditions are met. One of the key issues, found at IRC §355(a)(1)(A), requires the distributing corporation to have control (80%) of the spun-out entity prior to the distribution of that entity.

The safe harbor applies for transactions of the sort described in the procedure:

> (1) D (the corporation distributing the stock) owns C (controlled corporation) stock not constituting control of C;
>
> (2) C issues shares of one or more classes of stock to D and/or to other shareholders of C (the issuance), as a result of which D owns C stock possessing at least 80 percent of the total combined voting power of all classes of C stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of C;
>
> (3) D distributes its C stock in a transaction that otherwise qualifies under § 355 (the distribution); and

(4) C subsequently engages in a transaction that, actually or in effect, substantially restores (a) C's shareholders to the relative interests, direct or indirect, they would have held in C (or a successor to C) had the issuance not occurred; and/or (b) the relative voting rights and value of the C classes of stock that were present prior to the issuance (an unwind).

Generally such a transaction raises the risk that the IRS would assert the technical control was illusory and, in fact, D never really possessed the necessary control. Clearly that would be the case if there existed binding agreements entered into before the distribution that the minority shareholders who previously controlled more than 20% of C would be issued "their" extra shares immediately after the transaction.

But interests held in corporations change over time, and it's very possible a minority shareholder (or shareholders) could later acquire additional shares in a transaction that no one could have foresaw back when the entity had stock held by the distributing corporation. This ruling seeks to give a pair of "bright lines" that, if not crossed, will insure the IRS won't assert that D never really had the necessary control.

The first safe harbor applies so long as C stays "clean" for 24 months—and that means not just holding off on issuing the stock, but also does not adopt any plan or policy that will lead to an "unwind" even if the shares are not issued until after the 24 month period.

As the ruling provides at Section 4.01:

> .01 No Action Taken Within 24 Months. No action is taken (including the adoption of any plan or policy), at any time prior to 24 months after the distribution, by C's board of directors, C's management, or any of C's controlling shareholders (as defined in § 1.355-7(h)(3)) that would (if implemented) actually or effectively result in an unwind.

The second safe harbor applies to a third party transaction (such as a merger) that may result in an effective "unwind". In this case we have a 24 month "look back" period that applies—that is, there was no groundwork laid for the third party transaction during the 24 months before the distribution. As well, there is a 20% interest test that applies to those who own an interest in C and also in the third party.

As the ruling provides in Section 4.02:

> .02 Unanticipated Third Party Transaction. C engages in a transaction with one or more persons (for example, a merger of C with another corporation) that results in an unwind, regardless of whether the transaction takes place more or less than 24 months after the distribution, provided that --
>
> > (1) There is no agreement, understanding, arrangement, or substantial negotiations (within the meaning of § 1.355-7(h)(1)) or discussions (within the meaning of § 1.355-7(h)(6)) concerning the transaction or a similar transaction (applying the principles of § 1.355-7(h)(12) and (13), relating to similar acquisitions), at any time during the 24-month period ending on the date of the distribution; and
> >
> > (2) No more than 20 percent of the interest in the other party, in vote or value, is owned by the same persons that own more than 20 percent of the stock of C. For purposes of this section, ownership is determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3), except that for purposes of applying § 318(a)(3)(A) and (B), the principles of § 304(c)(3)(B)(ii) (without regard to § 304(c)(3)(B)(ii)(I)) apply.

Section 5 of the ruling cautions that these safe harbors only apply for the control requirements, and meeting them will not insure that the transaction is tax free if the fails to qualify for §355 treatment otherwise.

As well, Section 5.02 notes that not meeting the safe harbor is also not fatal to the transaction. Rather, it notes:

> .02 Effect of Safe Harbor Not Applying. If a transaction is not described in one of the safe harbors in section 4 of this revenue procedure, this revenue procedure has no effect on the determination of the

> federal tax treatment of the transaction. Rather, in such cases, the determination of whether an acquisition of control has substance and is therefore respected for purposes of § 355(a)(1)(A), and the proper treatment of all related transactions entered into by or between the parties, will be made under general federal tax principles without regard to the provisions of this revenue procedure.

The procedure also provides that the IRS will no longer automatically decline to issue letter rulings on the acquisition of control issue (modifying Revenue Procedure 2016-3) though the agency still reserves the right to do so in specific cases.

The procedure applies to distributions taking place on or after August 1, 2016, though taxpayers may rely on this procedure for the treatment of distributions taking place prior that date that meet the safe harbor requirements.

SECTION: 6404
"UNFAIRNESS" IS NOT A CRITERIA TO BE USED TO DETERMINE IF INTEREST IS EXCESSIVE

Citation: King v. Commissioner, Case No. 15-2439, CA 7, 2016 TNT 141-12, 7/21/16

The Seventh Circuit Court of Appeals decided that the IRS had not abused its discretion in denying an attorney's request for abatement of interest, reversing the decision of the Tax Court in the case of *King v. Commissioner*, Case No. 15-2439, CA 7, 2016 TNT 141-12.

The taxpayer in this case had asked for an abatement of interest related to employment tax liabilities after the IRS had initially indicated they would grant him an installment agreement to pay his unpaid payroll taxes, but later determined that he was not eligible for such an agreement. The taxpayer claimed that had he known the IRS would not grant an installment payment plan he would have paid the balance earlier, avoiding the interest from that date until he actually paid the tax.

IRC §6404(a) provides that abatement may be granted under the following conditions:

> (a) General rule. The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—
>
> > (1) is excessive in amount, or
> >
> > (2) is assessed after the expiration of the period of limitation properly applicable thereto, or
> >
> > (3) is erroneously or illegally assessed.

The Tax Court determined that, because of the unfairness of the situation, the interest in question was "excessive in amount" and the IRS had abused its discretion in failing to waive interest from the time they had told the taxpayer they would take an installment payment plan until the time he should have known of the requirements for qualifying for an installment arrangement, which amounted to only two months. The Seventh Circuit's opinion notes that the amount of interest that ultimately ended up being abated was about $500.

As the panel notes, despite that small cost the IRS decided to appeal the findings to the Seventh Circuit. In the interim Mr. King died and his wife declined to file documents in the appeal—frankly, not unreasonably since it almost certainly would have cost her far more than $500 to participate. Nevertheless the Seventh Circuit concluded the IRS had a right to be heard since Mrs. King could file a claim for refund to obtain the abated interest in question.

The opinion concludes that the IRS is correct—the Tax Court had inappropriately ruled there was an abuse of discretion in this case. The panel found that the term "excessive" cannot be equated to "unfair" in the way the Tax Court did in its opinion.

The panel had three objections to the Tax Court's ruling:

> The Service in our view was on sound ground in refusing to abate (i.e., forgive) interest King owed the government on his overdue payroll taxes. There are three reasons for our conclusion. The first is the vagueness of "unfairness' as a criterion for abatement; the word is an invitation to arbitrary, protracted, and inconclusive litigation. Second, extending as it does an invitation to taxpayers to delay paying taxes, the nebulous standard of "unfairness" could result in a significant loss of tax revenues. And third, we'll see that the Tax Court's approach is inconsistent with a valid regulation promulgated by the Treasury Department.

The last point is the one that the opinion spends the most time on, noting that the Supreme Court has held that generally IRS regulations interpreting terms that are ambiguous generally must be respected unless the IRS regulation itself is clearly an unreasonable interpretation. [*Mayo Foundation for Medical Education & Research v. United States*, 562 U.S. 44, 56 (2011)] The panel rejected the Tax Court's view that "excessive" clearly encompasses an "unfair" result, finding rather the that IRS regulation should control.

As the opinion notes regarding that regulation:

> ...[A] tax regulation entitled "Abatements," 26 C.F.R. § 301.6404-1(a), Treas. Reg. § 301.6404-1(a), while generally tracking 26 U.S.C. § 6404(a), restates "excessive in amount" as "in excess of the correct tax liability." The restatement eliminates the vagueness of "excessive" and leaves no room for basing interest abatements on "unfairness."

The fact that such a minor amount was appealed by the IRS clearly indicates the IRS was primarily troubled by the potential use of the original decision as a basis in granting relief in future cases.

SECTION: 6621
FEDERAL LAW GOVERNS PRE-NOTICE INTEREST IN TRANSFEREE LIABILITY CASE WHERE ASSETS RECEIVED GREATER THAN TOTAL CORPORATE TAX, PENALTIES AND INTEREST

Citation: Tricarichi v. Commissioner T.C. Memo. 2016-132, 7/18/16

In the case of ,*Tricarichi v. Commissioner* T.C. Memo. 2016-132 the Tax Court was asked to decide whether Ohio state law or federal law applied to the computation of interest owed for an individual found to have transferee liability under federal tax law. In an earlier case (T. C. Memo 2015-201) the Tax Court had found Michael liable for taxes due following a "Midco" transaction.

Roughly summarized, a "Midco" transaction involved the sale of a corporation owned by a shareholder who would sell his stock to a third party. In turn, that party would sell the assets of the corporation and use those assets to finance the purchase from Michael, leaving little or no assets in the corporation to pay the resulting corporate income tax. While the buyers claimed to have a way to offset that gain, the Courts have found in a number of cases that the shareholder should have realized the result was too good to be true and imposed transferee liability when the "offset" is later found invalid and a large corporate tax liability exists for a corporation with no remaining assets. Michael was one of those found to have such liability.

But now the question was how much interest (if any) Michael owed on the balance due before the date he was given notice of transferee liability. Michael claimed that the IRS was bound by Ohio state law and that under that law interest would not begin to be owed by Michael on this debt until the notice of transferee liability was given.

The Court notes the following regarding "pre-notice" interest:

> Depending on the value of the assets received by the transferee and the aggregate tax liability owed by the transferor, the calculation of pre-notice interest may involve Federal and/or State law. These variables may also affect the rate at which interest is calculated and the date on which interest begins

to accrue. Most State laws refer to the interest that may accrue during this period as "pre-judgment interest." We will use the term "pre-judgment interest" to refer to interest that may accrue under State law during the pre-notice period.

The Court noted that the matter had been considered earlier in the case of *Lowy v. Commissioner*, 35 TC 393 (1960), holding that "where (as there) the value of the assets distributed to the transferee substantially exceeded the transferor's aggregate liability for deficiencies, penalties, and interest, the transferee's liability for interest is governed by, and must be computed in accordance with, the Internal Revenue Code."

The Court notes that the actually liability escaped in question involves federal law, which provided that the corporation owed taxes, penalties and interest. Thus, the Court notes:

> Surveying cases dating back to *Cappellini v. Commissioner*, 16 B.T.A. 802 (1929), we concluded in *Lowy* that 'the quantum of the underlying claim that the * * * [IRS] is seeking to enforce against the transferee must be determined by the law which created that claim," namely, the Internal Revenue Code. 35 T.C. at 396. Because the transferor's liability for tax, penalties, and interest is determined by the Federal statute, we deemed it "wholly inappropriate * * *, where the transferred assets are more than ample to discharge the full Federal liability of the transferor (including interest), to look to State law for the creation of any right to interest." Id. at 397. On the other hand, "where the transferred assets are insufficient" to satisfy the IRS' claim against the transferor, "the creditor may have a further right to collect interest from the transferee, based upon the wrongful use of those assets by the transferee prior to payment." Ibid. "The latter right is one that is founded on State law, and it is only in such circumstances that it becomes appropriate to investigate State law to determine the rate of interest, [and] the date from which it runs." *Ibid.*

The Court then turned to the case at hand, finding:

> In the instant case West Side's total Federal tax liability for 2003, including tax, penalties, and pre-notice interest computed thereon, is $35,086,437 (that is, $15,186,570 of tax + $6,012,777 of penalties + $13,887,090 of pre-notice interest as determined by respondent). In our prior opinion we found that petitioner received, as West Side's transferee, cash and cash equivalents with an aggregate value of $35,199,372. See *Tricarichi*, at *58. Because petitioner received assets with a value in excess of West Side's total Federal tax liability (including pre-notice interest), his liability for pre-notice interest is determined by Federal law.

The taxpayer argues that this analysis is flawed based on the Supreme Court's decision in *Commissioner v. Stern*, 357 US 39. The opinion notes he argues:

> ...[E]mphasizing the Supreme Court's ruling in Stern that State law controls "the existence and extent" of transferee liability, 357 U.S. at 45, petitioner contends that pre-notice interest should be determined under State law because it goes to "the extent" of such liability. Asserting that the First Circuit's Schussel opinion "highlights the continued uncertainty regarding computation of pre-notice [interest]," petitioner urges that the Lowy line of cases "should be revisited" in order to ensure adherence to the Supreme Court's mandate concerning the proper role of State law.

However, the Tax Court notes that a number of cases have been decided under the criteria noted in the sixty years since the *Stern* opinion was issued.

> The Supreme Court issued its opinion in *Stern* almost 60 years ago, and the principal cases discussed above all post-date *Stern*. In developing the law concerning pre-notice interest, the courts have been fully conscious of, and properly faithful to, the Supreme Court's mandate. Far from manifesting uncertainty, the law that has evolved since *Lowy* appears quite stable and clear. *Schussel* is hardly a poster child for uncertainty: The IRS there urged that *Lowy* and *Estate of Stein* provided the critical guide-posts, and the First Circuit explicitly followed the reasoning of both cases. We have no reason to

> suspect that the Ninth Circuit, to which this case would be appealable absent stipulation to the contrary, see sec. 7482(b)(2), would take a different stance, see supra p. 11 and note 2.

The Court concludes:

> In short, the courts have consulted State law to ascertain whether the Government may recover from the transferee, in the form of pre-judgment interest, an amount larger than the value of the assets the transferee received. Petitioner has cited, and our own research has discovered, no case in which a court has invoked State law governing pre-judgment interest as a basis for reducing the Government's recovery to an amount smaller than the value of the assets the transferee received. That is what petitioner seeks to do here, and there is simply no precedent for it.