Ignoring State Homestead Laws: Satisfying Federal Tax Liens through the Sales of Homestead Property - United States v. Rodgers

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Section 7403 of the Internal Revenue Code\(^1\) authorizes a judicial sale, in order to enforce a lien of the United States,\(^2\) of any property in which a delinquent taxpayer has any right, title or interest.\(^3\) In a number of states family homes\(^4\) or places of business\(^5\) have been desig-

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2. The lien of the United States would arise pursuant to the provisions of I.R.C. §§ 6321-6326 (1984). At any time that a taxpayer becomes liable to pay any tax and neglects or refuses to pay the same after a demand for payment has been made, the amount of total liability, including interest, penalty and costs that may accrue, shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to the delinquent taxpayer. I.R.C. § 6321 (1984).
3. In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.
5. See, TEX. CONST. art. XVI, § 50.
nated as homesteads, and as such, are exempt from the reach of most creditors. Despite the protections afforded the homestead at the state level, these same protections do not exist at the federal level especially when the Internal Revenue Service reaches the taxpayer's homestead property to satisfy its lien against the taxpayer.

State homestead laws have designated two types of property interests, a homestead exemption and a homestead interest, as being exempt from the reach of most creditors. Homestead exemptions are limited either with regard to area or with regard to value which is placed on the homestead property. The exemption classification grants the claimant a life interest in the property, but the life interest is limited to the value or area of exemption. Homestead interests are separate and undivided possessory interests in the homestead which are akin to remainder interests and which vest in each spouse the equivalent of an undivided life estate in the homestead property. The homestead interest, as an undivided life estate in both a husband and wife, cannot be divested during their lives, except by abandonment or by voluntary conveyance.

No matter how homestead laws are classified, they are intended to

6. "Homestead" has been defined as "an artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of his creditors, by withdrawing the property from execution and forced sale, so long as the land is occupied as a home." Black's Law Dictionary 660 (5th ed. 1979).

7. In most instances, the homestead exemption will prevent a forced sale of the homestead property, but in certain situations the homestead exemption will not prevent a forced sale. See, e.g., Ill. Rev. Stat. ch. 110, § 12-903 (1983) which authorizes a forced sale to satisfy a debt for the non-payment of ad valorem property taxes or to satisfy a debt incurred for the purchase or improvement of homestead property.


10. Ill. Rev. Stat. ch. 110, § 12-901 (Supp. 1982) entitles every individual to an estate of homestead to the extent of $7,500.00 in value. Although the statute limits the homestead in terms of $7,500.00 in value, the courts have interpreted the homestead statute to create an estate in land and not a mere exemption. Wiegand v. Wiegand, 410 Ill. 533, 542, 103 N.E.2d 137, 142 (1952); Garwood v. Garwood, 244 Ill. 580, 585, 91 N.E. 672, 674 (1910).


promote the security of the family by protecting the family from destitution and pauperism. The protection from destitution and pauperism is accomplished by exempting the homestead from attachment, judgment levy and judgment sale for the payment of debts. Although this protection would protect the homestead from attachment by one’s creditors, it no longer will provide protection against the Internal Revenue Service seeking to enforce its lien against the taxpayer’s homestead property.

Prior to 1983, there was a split among the circuits with regard to the effect of state homestead rights on federal tax liens. Some circuits held that, under the supremacy clause, the enforcement of federal tax liens was not barred by state property rights. Still others held that state homestead statutes would immunize the homestead from the reach of the federal tax lien under I.R.C. Section 7403. Even the United States Supreme Court ruled that state law controls in determining the nature of the legal interest held by the taxpayer and federal law governs the priority of competing liens asserted against the taxpayer’s property or rights to the property. In United States v. Rodgers, the United States Supreme Court decided that under I.R.C. Section 7403, a federal district court has the discretionary power to order the sale of the entire homestead property in which a delinquent taxpayer has any right, title, or interest. In its interpretation of the

16. The homestead is not protected against attachment in all situations. For example, a creditor could force the sale of a homestead to satisfy a debt that arose from the purchase or improvement of homestead property.
22. 103 S.Ct. 2132 (1983).
23. Id. at 2146.
federal tax lien statutes\textsuperscript{24} and the available means of enforcement,\textsuperscript{25} the Court held that the non-delinquent taxpayer's homestead rights no longer acted as a bar to a judicial sale of a home as authorized under I.R.C. Section 7403.\textsuperscript{26}

This comment first examines the history of federal tax liens, when they arise, the type of property that can be attached, the priority over other liens and the means of enforcement available. Next, the comment examines the interpretations of the federal tax lien statutes by federal courts in regard to the enforcement of liens against property designated as a homestead. The Rodgers opinion will be presented and analyzed. Finally the impact of the Rodgers opinion on homestead property will be discussed. It will conclude that the recognition of state homestead rights as a bar against foreclosure of a federal tax lien would not yield a different result and would provide greater protections for the non-delinquent taxpayer than would nonrecognition of state homestead rights.

**Attachment And Enforcement Of Federal Tax Liens**

Federal tax liens arise under Section 6321 of the Internal Revenue Code when "any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property . . . belonging to such person."\textsuperscript{27} Though I.R.C. Section 6321 refers to the nonpayment of any tax as giving rise to a lien in favor of the United States, the lien does not arise until the tax has been assessed,\textsuperscript{28} a deficiency has been determined,\textsuperscript{29} notice and demand for payment have been made\textsuperscript{30} and the taxpayer refuses or neglects to pay the tax due.\textsuperscript{31}

\textsuperscript{24} I.R.C. §§ 6321-6326 (1984).
\textsuperscript{26} Rodgers, 103 S.Ct. at 2146.
\textsuperscript{27} I.R.C. § 6321 (1984).
\textsuperscript{28} I.R.C. § 6201(a) (1984) authorizes the Secretary of the Treasury to assess all taxes determined by the taxpayer or by the Secretary as to which returns are made under the Code. The assessment of tax is an administrative determination of the amount due either based upon taxpayer returns or upon a determination of liability by the Internal Revenue Service. 4 BITTKER, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS, ¶ 111.5.5 (1981 & Supp. 1983).
\textsuperscript{29} In the event that the tax imposed by the Code exceeds the excess of the sum of the amount shown as the tax due by the taxpayer upon his return plus amounts previously assessed as deficiency over the sum of abatements, credits, refunds and payments, a deficiency arises under I.R.C. § 6211 (1984).
\textsuperscript{30} I.R.C. § 6303(a) (1984) provides that within 60 days of making an assessment of a tax, the taxpayer liable for the unpaid tax must be given notice which indicates the amount due and demands payment of that amount.
\textsuperscript{31} If payment of the deficient amount is not made within the allowable 10 day period then the lien provisions of Section 6321 take effect retroactively to the date of assessment.
The original lien provisions were proposed within the context of an act in 1864 that provided for "internal revenue to support the government to pay interest on the public debt, and for other purposes." The first lien provisions were enacted in 1865. Within the context of the Internal Revenue Act the lien provisions were very similar to those found in the current lien provisions of the Internal Revenue Code. Specifically, the original tax lien act provided that upon finding of tax liability and the neglect or refusal to pay the amount after demand was made, that the amount due became a lien in favor of the United States from the date that the liability first arose until payment was made. After demand for payment by the collector and refusal to pay by the taxpayer, the collector, by levy or by warrant, was authorized to levy upon all property and rights to property belonging to the delinquent taxpayer. In 1866, the original tax lien act was incorporated and amended as part of the Internal Revenue Act of 1866.

Once a lien in favor of the United States arises, the provisions of I.R.C. Section 6331 provide for the collection of such delinquent taxes by levy upon all property and rights to property belonging to the delinquent taxpayer or on which there is a lien provided in I.R.C. Section 6321 for the payment of such tax. The provisions authorizing the execution of the lien on the delinquent taxpayer's property originate from the Internal Revenue Act of 1865, as do the original lien provisions of the Internal Revenue Code.

Despite the fact that the statute authorizes a levy upon all property and rights to property which belong to the delinquent taxpayer, I.R.C. Section 6334 exempts nine specific types of property from levy. The following types of property are specifically exempt from levy to enforce a lien:

1. Wearing apparel and school books as are necessary for the taxpayer or for his family; 2. Fuel, provisions, furniture and personal effects in the taxpayer's household and arms for personal use, livestock and poultry which does not exceed $1,500 in value; 3. Books and tools necessary for the
torically, property exempt from levy was limited to personal effects and tools or implements of a trade or profession.46 A subsequent amendment to the Internal Revenue Act of 1865 enlarged the scope of exempt property and clarified the value and quantity of personal effects that were exempt from levy.47 Subsequent amendments have expanded the types of exempt property to its current status.48

Except for property specifically enumerated as being exempt, I.R.C. Section 6334(c)49 provides that no other property shall be exempt from levy. Although the Code limits property exemptions to specific types of property, historically this was not true. The original tax lien provisions enacted in 186550 provided for the exemption of real property while personal property was subject to lien.51 In the event of distraint for payment of duties or taxes, the goods, chattels, or effects so distrained could be restored to the owner or possessor upon payment of the delinquent taxes or duties prior to sale.52 A literal reading of the statute indicates that the only property subject to a tax lien was tangible personal property and not real property. Amendments further exempting other types of property have expanded the scope of the lien provi-
sions from liens that attached to only tangible personal property to liens that attached to all real and personal property, unless otherwise exempted. The reach of the lien provisions beyond personal property to real property eventually formed a basis for the Court's decision in Rodgers.

I.R.C. Section 7403, in conjunction with I.R.C. Sections 6321 and 6331, provides that a civil action may be filed to enforce the tax liens that arose due to the refusal or neglect to pay any tax after a demand was made. In the event that enforcement of the tax lien is sought, any property owned outright by the delinquent taxpayer, or any property in which he has any right, title, or interest may be sold. The proceeds of such sale will be distributed according to the findings of the court in respect of the relative interests in the property. The original version of I.R.C. Section 7403 provided that in all instances where the court found that a valid tax lien existed, sale of the real estate to satisfy the lien was mandatory. Unlike the current version of I.R.C. Section 7403 that allows for the sale of all property, the original version limited the sale to real property. Presently, the district courts have the discretionary authority to order the sale of real estate in which the delinquent taxpayer has any interest, right or title. The modification of the district court's authority occurred in 1936 when the phrase "shall decree a sale" was amended to read "may decree a sale."

In 1966, Congress enacted legislation that directly affected the distribution of proceeds based on the interests held by all involved parties. As part of the Federal Tax Lien Act of 1966, a lien of the Internal Revenue Service created an interest in the property to the extent of the value of the lien, but it did not create a property right in the taxpayer's property. Furthermore, the federal tax lien did not have pri-

55. Id.
56. I.R.C. §§ 7403(b) & (c) provide that all persons, other than the taxpayer, having or claiming any interest in the real property subject to lien must be made a party to the action. Once all the interests are identified, the court then proceeds to determine the merits of all claims and liens upon the property. If in the exercise of its discretionary authority, the court decrees a sale, then the proceeds are distributed according to the court's determination of the interests of the parties and of the United States.
57. 15 Stat. ch. 186 (1868).
58. But see supra notes 50-52 and accompanying text.
ority over other secured interests in the property. State law governed the attachment of liens even though federal law governed the type of property that could be attached.

Upon the attachment of the taxpayer's property as provided in I.R.C. Section 6321, the execution of the lien under I.R.C. Section 6331 and the judicial sale of the taxpayer's property are governed by the priority provisions of I.R.C. Section 6323. I.R.C. Section 6323 recognizes that the effect of federal tax liens is not governed solely by provisions of the Internal Revenue Code, but that provisions of the Uniform Commercial Code, the Bankruptcy Act and state law regulating the rights of secured creditors must also be considered. The Internal Revenue Code segregates the types of creditors that are protected against the unfiled lien from those creditors to which the "first in time, first in right" principle of the Uniform Commercial Code applies. Even if notice is filed, ten classes of creditors still retain

64. I.R.C. § 6321 provides that there "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal," belonging to the delinquent taxpayer.
72. Id. Four classes of creditors would have automatic priority over a federal tax lien. The class includes good faith purchasers for value; holders of security interests; mechanic's lienors; and judgment lien creditors. See also, I.R.C. §§ 6323(a) and (h) (1984).
73. I.R.C. § 6323(a) (1984). Not until filing would creditors have any notice of the existence of a tax lien. In order to protect this class of creditors against the "secret" federal tax lien the Code provides that the tax lien will be invalid until notice is given. A federal tax lien is essentially a "secret" lien because it takes effect retroactively as of the date of assessment and arises automatically upon the taxpayer's neglect or refusal to pay any tax due. See, Plumb, Federal Liens and Priorities—Agenda for the Next Decade, 77 YALE L.J., 228, 229 (1967).
74. See, I.R.C. § 6323(f) (1984) with regard to the filing requirements.
75. I.R.C. § 6323(b) (1984) provides that the following classes of creditors have super-priority over a federal tax lien: 1. Purchasers of corporate or other securities; 2. Purchasers of motor vehicles; 3. Purchasers of tangible personal property sold in a retailer's ordinary course of business; 4. Purchasers of up to $250 of tangible personal property, household goods and other personal effects in a casual sale; (Also, the purchasers listed in 1-4 only have priority over a federal tax lien if they did not have actual notice or knowledge of the existence of such lien at the time they acquired the property.) 5. Tangible personal property subject to a possessory lien to secure the reasonable price of repair or improvement to such property; 6. Real property tax and special assessment liens which are prior in time and which secure payment of ad valorem or special assessment taxes or for public utilities or services; 7. Mechanic's liens on residential property not exceeding four dwelling units or $1,000 in value; 8. Attorney's lien on judgments and settlements subject to tax liens; 9. Claims of an insurer on life, endowment or annuity insurance contracts with
their super-priority over the federal tax lien. Although creditors of the delinquent taxpayer are offered some protection against a federal tax lien, unless the court recognizes that a state homestead interest creates a vested property right, a non-delinquent taxpayer with an interest in the property would not have the same protection that a creditor has against the enforcement of a federal tax lien.

Prior to the Court's decision in *Rodgers*, there was a split among the circuits with regard to the protections that state homestead rights afforded a non-delinquent taxpayer against a federal tax lien. In *Herndon v. United States*, the United States Court of Appeals for the Eighth Circuit held that the taxpayer spouse's homestead interest did not prevent the government's foreclosure of its lien on the homestead property. The court held that under the exemption limitation of Treas. Reg. § 301.6334-1(c) (1979) and the supremacy clause, federal collection of taxes should be prior to any rights of a state to exempt its citizens from federal taxing power. Since homestead interests or rights were not specifically exempt under I.R.C. Section 6334(c), and since Congress had not acted to create a homestead exemption, the court was not willing, on its own, to create a homestead exemption.

In *United States v. Hershberger*, the United States Court of Appeals for the Tenth Circuit bifurcated the homestead interest into property exemptions and property rights that existed under state law. The court stated that a homestead exemption, created under state law to protect the non-taxpayer spouse's interest from general creditors, would not prevent an execution of a federal tax lien against that spouse's interest. Where the state law created a present property interest in the homestead property, then the homestead interest was a

respect to automatic advances required to keep the policy in force; 10. Passbook loans by savings institutions.

77. A federal tax lien would be invalid as against either the four classes of creditors protected against an unfiled federal tax lien and as against the ten classes of creditors protected against a filed federal tax lien. See supra notes 63 and 67.

78. 501 F.2d 1219 (8th Cir. 1974).

79. Id. at 1222-23.

80. "No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes."

81. *Herndon*, 501 F.2d at 1223.

82. Id.

83. 475 F.2d 677 (10th Cir. 1973).

84. This rationale was consistent with the decision in *Aquilino v. United States*, 363 U.S. 509 (1960) that state law would govern the nature of the interest created.

85. *Hershberger*, 475 F.2d at 682.
valid protection against the execution of a federal tax lien. Under Kansas law, a homestead consisted of one acre of land located within the city limits if occupied as a family residence. As the Kansas state courts had interpreted the homestead provisions, a present property interest existed in the homestead property which granted the taxpayer's spouse an immediate enjoyment in the homestead property. As the \textit{Hershberger} court interpreted Kansas law, the indivisible and vested interest in homestead property protected the property against levy and sale to satisfy the delinquent spouse's federal tax liability.

In \textit{Rodgers}, the United States Court of Appeals for the Fifth Circuit, following the \textit{Hershberger} court's reasoning, held that because Texas law created a present property interest that the federal tax lien could not be enforced against the homestead property occupied by Mrs. Rodgers.

\textbf{STATE HOMESTEAD RIGHTS AND EXEMPTIONS}

The state homestead exemption traces its origin to an 1839 statute of the Republic of Texas that granted an exemption of fifty acres or one town lot, including a homestead and improvements, not exceeding five hundred dollars in value. Following Texas's lead, almost all the remaining states adopted a homestead exemption by constitutional amendment or by statute. Although the state constitutions and statutes consider the homestead as creating an exemption, some states have interpreted their homestead laws to create a present property interest in a spouse.

The creation of a homestead is conditioned upon the occurrence of certain events in order to protect it from attachment and execution by general creditors. In order for the property to qualify as a homestead, the property must belong to the head of the family and the family

86. \textit{Id.}
88. \textit{Hershberger, 475 F.2d at 680, citing, Helm v. Helm, 11 Kan. 19 (1873).}
89. \textit{Id. at 682, quoting, Jones v. Kemp, 144 F.2d 478 (10th Cir. 1944).}
90. \textit{Rodgers, 649 F.2d at 1120, 1127.}
91. \textit{Id. at 1127-28.}
93. \textit{See supra note 4.}
94. \textit{See, e.g., Cal. Const. art. XVII, § 1; Fla. Const. art. X, § 4(a)(1); Tex. Const. art. XVI, §§ 50-52.}
96. \textit{See supra note 10.}
97. \textit{2A Powell on Real Property 406.7-406.10 (1981). The "head of family" designation has been defined as any person who is responsible for the support of another family member. But}
must actually occupy it as their home. Furthermore, an owner may be required to have an ownership interest in the property and a formal declaration of the property as a homestead may be required.

A homestead exemption, as distinguished from a homestead property interest, limits the exemption either in terms of value or in terms of size or in terms of both value and size. A homestead which exceeds the exemption either in value or in size would subject the excess above the exemption value or size to the claims of creditors. Essentially, the homestead exemption protects the homesteader only to the extent of the exempt value or size unless the exemption also creates a present property interest in a spouse. The present property interest vested in a spouse is one which continues "for the benefit of the spouse surviving, so long as he or she continues to occupy such homestead, and of the children until the youngest child becomes 18 years of age." Another form of present homestead interest is a vested estate in land of which the spouse cannot be divested during her life except by abandonment or voluntary conveyance in any legal manner. In either case the homestead right would continue to protect the spouse and minor children until death or remarriage of the former and majority or marriage of the latter at which time the property may be sold to satisfy any debts "it might have been subject to had it not been exempt, which grants every individual a homestead exemption in real or personal property occupied by him or her as a residence.

See, e.g., Ala. Const. art. X, § 205 (80 acres and not exceeding $2,000.00 in value). The type of interest required to create a homestead exemption is one which is capable of use as a home, although an equitable interest can also give rise to a homestead exemption. The formal declaration serves to notify creditors that the property is exempt from execution. Subsequent purchasers of the property would also have notice that a spouse's consent would be required to convey the property. Subsequent purchasers of the property would also have notice that a spouse's consent would be required to convey the property.

See supra note 9.

See supra note 8.


See, e.g., Chandler v. Pilley, 60-1 U.S.T.C. § 9238 (Prob. Ct., Shelby County, Tenn. 1959). In Chandler, the state constitution provided for a homestead exemption in the amount of $1,000.00. At the time of his death, decedent was indebted to the United States for delinquent taxes in the amount of $165,440.53. From the proceeds of sale the court ordered that the surviving spouse receive $608.88 which was a sum based upon the standard mortality table, in full settlement of her homestead rights.

See, e.g., Chandler v. Pilley, 60-1 U.S.T.C. § 9238 (Prob. Ct., Shelby County, Tenn. 1959). In Chandler, the state constitution provided for a homestead exemption in the amount of $1,000.00. At the time of his death, decedent was indebted to the United States for delinquent taxes in the amount of $165,440.53. From the proceeds of sale the court ordered that the surviving spouse receive $608.88 which was a sum based upon the standard mortality table, in full settlement of her homestead rights.


empted property."

APPLICATION OF STATE LAW IN THE DETERMINATION OF PROPERTY INTERESTS OF A DELINQUENT TAXPAYER

In *United States v. Bess*, the Supreme Court considered the dichotomy of federal and state law with regard to the collection of delinquent taxes from a non-delinquent spouse. The Internal Revenue Service sought to recover, in equity, from the beneficiary of life insurance policies the amount of federal income taxes owed by the insured at the time of his death. Immediately prior to his death, Herman Bess possessed eight life insurance policies which had a cash surrender value of $3,362.53. These eight insurance policies named his wife as beneficiary and she received $63,576.95 in proceeds upon his death. At the time of his death, Herman Bess was liable for federal income taxes from the years 1945 to 1949. After applying all the assets of the estate toward satisfaction of the tax liability, a total of $8,874.57 remained owing. The Internal Revenue Service in an equitable action sought to shift the unpaid tax liability to Mrs. Bess, as beneficiary of her husband's life insurance policies. The trial court held the beneficiary liable for the full amount of the delinquency. On appeal, the United States Court of Appeals for the Third Circuit reduced the liability to an amount equal to the cash surrender value of the life insurance policies at the time of the insured's death. The Supreme Court agreed with the court of appeals' decision that the beneficiary was liable for the insured's delinquent taxes in the amount of the cash surrender value of the insurance policies. Though the lien enforcement provisions provided for the attachment of a lien on all property belonging to the delinquent taxpayer, the Court looked to New Jersey law to determine the property rights vested in the delinquent taxpayer at the time of his death. Under New Jersey law, the delinquent taxpayer did not have any property or rights to property in the insurance proceeds, thus the federal tax lien could not attach to them. The Court, however, did hold that under New Jersey law, the cash surrender value of the insurance policies was "property" or "rights to property" to which a lien

112. 243 F.2d 675 (3d Cir. 1957).
116. *Id.* at 56.
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could attach. Even though New Jersey law exempted an insured's cash surrender value from attachment by lien creditors, the Court concluded that when state law created a property interest in the cash surrender value of an insurance policy, the property interest was sufficient to satisfy the requirements of the lien enforcement provisions of the Internal Revenue Code.

*Aquino v. United States* amplified the decision in *Bess*. In *Aquino*, the Internal Revenue Service attempted to claim priority over petitioner's mechanic's lien against a delinquent taxpayer. The Supreme Court of New York, Special Term, on a motion for summary judgment held that the government's tax lien was ineffective because it had not been filed in the office designated by New York law for the filing of liens against real property. On appeal, the appellate division affirmed on other grounds, namely that there was no debt due from the property owner to the taxpayer to which the government's tax lien could attach. Although the New York Court of Appeals reversed on the ground that the federal tax lien had taken effect prior to the mechanic's lien, the Supreme Court vacated the judgment. Under the Court's reasoning, state law governed the determination of the nature of the legal interest which the taxpayer had in the property sought to be reached by the tax lien. A finding by a court that a taxpayer held a property interest under state law would allow the attachment of a federal tax lien and priority would be determined according to federal law. The application of state law in determining the property interest to which federal consequences could attach was viewed as a traditional function delegated to the state and as necessary for the uniform administration of the federal revenue statutes. The doctrine established by *Bess* and *Aquino* that state law governs the determination of the nature of the property interest held by the delinquent taxpayer's death.

117. *Id.* Essentially the lien attached to the cash surrender value immediately prior to the delinquent taxpayer's death.
118. *Id.* at 56-57.
121. 2 A.D.2d 747, 153 N.Y.S.2d 268 (1956).
123. *Aquino*, 363 U.S. at 515-16.
125. *Id.* at 514.
126. *Id.* Not only did the Court view the application of state law to the determination of property interests as a traditional and necessary function, but it also rejected the suggestion, as unsound, that the definition of a taxpayer's property interest should be governed by federal law. *Aquino*, 363 U.S. at 513, n.3.
sequent taxpayer has consistently been applied by the federal courts.\textsuperscript{127}

**United States v. Rodgers**

**Facts of the Case**

In 1971 and 1972, the Internal Revenue Service issued assessments against Philip S. Bosco totalling more than $900,000.00. The assessments were issued to collect federal wagering taxes, penalties and interest for the taxable years 1966-1971. These taxes remained unpaid at the time of Bosco's death in 1974. In September 1977, the government filed suit under I.R.C. Section 7402\textsuperscript{128} and 7403\textsuperscript{129} seeking to reduce to judgment the assessments against Bosco; to enforce its tax liens including the one that had attached to Bosco's interest in the residence; and to obtain a deficiency judgment in the amount of any unsatisfied judgment.\textsuperscript{130} At the time that the government sought to enforce its lien, Lucille Mitzi Bosco Rodgers, the widow of Philip S. Bosco, was residing and occupying the homestead that was acquired as community property. At the time the assessment was made, only Philip S. Bosco was liable for delinquent taxes. Lucille Bosco Rodgers' status remained a non-delinquent taxpayer's spouse. The United States District Court for the Northern District of Texas granted partial summary judgment on Rodgers' claim that federal tax liens could not defeat a non-delinquent taxpayer spouse's state created right not to have her homestead subjected to a forced sale to satisfy the lien that had attached to Bosco's interest in the home.\textsuperscript{131} Although a forced sale was precluded, the government was given the option of either enforcing its lien by waiting until Mrs. Rodgers' homestead interest lapsed by death, abandonment or conveyance or by selling Philip Bosco's interest in the property.\textsuperscript{132}

On appeal, the United States Court of Appeals for the Fifth Circuit\textsuperscript{133} held that the tax liens attached only to the taxpayer's interest in the homestead property with the interest of the non-taxpayer spouse

\textsuperscript{127} See infra note 207.

\textsuperscript{128} I.R.C. § 7402 (1977) provided for the jurisdiction of federal district courts in civil actions "to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws."

\textsuperscript{129} See supra notes 53-59 and accompanying text.

\textsuperscript{130} Rodgers, 103 S.Ct. at 2139.

\textsuperscript{131} Id.

\textsuperscript{132} Id. at 2140. It is questionable if a lien would give rise to incidents of ownership which would entitle the government to sell the delinquent taxpayer's interest. See infra notes 208-210 and accompanying text.

\textsuperscript{133} United States v. Rodgers, 649 F.2d 1117 (5th Cir. 1981).
remaining free of any tax liens. Applying Texas law the court found
that a present property interest in the homestead existed, thus the fed-
eral tax lien could not result in foreclosure against homestead property
as long as the non-taxpayer spouse's interest therein existed under state
law.

In another case decided with Rodgers that was legally comparable
but factually distinct, the Supreme Court held that state homestead
rights did not prevent the sale of homestead property where there was
joint income tax liability. In Ingram v. City of Dallas Dept. of Hous-
ing and Urban Rehabilitation, the Internal Revenue Service assessed
Donald Ingram, individually, for unpaid withholding taxes in 1972 and
1973. In 1973, Donald and Joerene Ingram were jointly assessed for
unpaid personal income taxes. In 1975, at about the same time that the
Ingrams were seeking a divorce, their homestead property was de-
stroyed by fire. This property later became the subject matter of the
Internal Revenue Service's action to enforce its lien against the pro-
cceeds of sale under I.R.C. Section 7403.

Unlike Rodgers, the court of appeals in Ingram allowed the fore-
closure of the lien to satisfy the tax liability despite the fact that Texas
law created a property interest in the homestead. Although different
conclusions were reached based on similar facts, Ingram involved indi-
vidual and joint tax liability, while Rodgers involved individual tax lia-
bility. The decision of the court of appeals in Ingram did not totally
ignore the property interest created by Texas law, with regard to the
joint liability, homestead rights did not act as a bar to foreclosure of the

134. Id. at 1123.
135. Id. at 1124-25.
136. Rodgers, 103 S.Ct. at 2152.
137. 649 F.2d at 1128 (5th Cir. 1981).
138. Ingram differed from Rodgers due to the circumstances surrounding the government's
attempt to enforce its lien under Section 7403. In Ingram, as part of the property settlement
entered into, Joerene Ingram was entitled to receive her ex-husband's interest in the real property
(homestead) in exchange for $1,500.00. The $1,500.00 payment was to be made from the proceeds
of sale, which was never accomplished because of the federal tax liens encumbering the property.
Acting under the threat that the property would be leveled if not brought up to the city code,
Joerene Ingram brought an action against the City of Dallas Department of Housing & Urban
Rehabilitation to quiet title to the property, to remove the federal tax liens and to enjoin demol-
ition. The Internal Revenue Service removed the suit to the United States District Court for the
Northern District of Texas. Following removal, the government filed a counter-claim against the
Ingrams seeking to recover the individual and joint liability for unpaid taxes. Eventually the
property was sold under Section 7403 and the proceeds were deposited into the registry of the
district court. On motion for summary judgment, the government was granted its counter-claim.
The difference between Ingram and Rodgers is two-fold; the implied abandonment of the home-
stead following the fire and the fact that the Ingrams were jointly liable for unpaid personal in-
come taxes.
139. Ingram, 649 F.2d at 1131-32.
lien on homestead property. Relying on Rodgers, the court held that homestead rights protected the non-taxpayer spouse’s interest from foreclosure when the lien existed against only one spouse.

Certiorari was granted in order to resolve a conflict among the courts of appeals as to the proper interpretation of I.R.C. Section 7403 and its effect on state homestead rights or exemptions. Rodgers was reversed and remanded for further consideration with regard to a foreclosure of the lien on the homestead and for a valuation of Lucille Rodgers’ interest in the property. Ingram was vacated and remanded.

Reasoning of the Court

The Court in Rodgers considered the issue of whether I.R.C. Section 7403 empowered a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time that the indebtedness arose and in which the non-delinquent taxpayer’s spouse also held a separate “homestead” right as defined by state law. The Court held that in no instance would a state homestead right prevent the sale of the homestead to satisfy a federal tax lien. In order to avoid significant difficulties under the due process clause of the fifth amendment, the Court provided that the non-delinquent spouse was entitled to so much of the distribution of proceeds provided for under I.R.C. Section 7403 as represents complete compensation for the loss of the homestead estate. The Court reached this conclusion by first examining the relationship between the lien and enforcement provisions of the Code. Next the Court examined the effect of homestead rights as a bar to a forced sale under I.R.C. Section 7403. Then the Court considered the due process requirements with regard to providing a non-delinquent spouse with adequate compensation for the loss of homestead property. Before providing guidelines to be followed by federal district courts in I.R.C. Section 7403 actions, the Court realized that I.R.C. Section 7403 was discretionary in its application. The discre-

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140. Id.
141. Id. at 1132.
142. 456 U.S. 904 (1982). A single petition for writ of certiorari was filed pursuant to Sup. Ct. R. 19.4 (1983). Rule 19.4 provides that “[W]hen two or more cases are sought to be reviewed on certiorari to the same court and involve the identical or closely related questions, it will suffice to file a single petition for writ of certiorari covering all the cases.”
143. See supra notes 78-91 and accompanying text.
144. Rodgers, 103 S.Ct. at 2152.
145. Id.
146. Id. at 2136.
147. Id.
tionary application of I.R.C. Section 7403 would give rise to a balancing by the courts of the individual, government and third party interests before ordering a sale of the property.

In Rodgers, the lower court held that the property, to which a federal tax lien attached under I.R.C. Section 6321, would be subject to enforcement of the lien under I.R.C. Section 7403(a) but only to the extent of the taxpayer's interest in the property. The Supreme Court agreed that a lien under I.R.C. Section 6321 did not extend beyond the delinquent taxpayer's interest but that under I.R.C. Sections 7403(a) and 7403(b) a district court was authorized to enforce its lien against whatever property was owned by the taxpayer without regard to the extent of ownership in that property. Together with I.R.C. Section 7403(c), the Court interpreted the statute to provide the authority to sell the property in its entirety and not to restrict the sale to the taxpayer's interest therein.

The Court based its interpretation on the predecessor statute to I.R.C. Section 7403. At the state level in rem proceedings were employed not only to satisfy a delinquency that arose from ad valorem property taxes, but also to extinguish the interests of other non-delinquent owners. The court interpreted the predecessor statute to I.R.C. Section 7403 as creating the same type of in rem rights in the federal government. Adjudication of all matters involved as well as the determination of all claims and liens upon the property provided greater protection than in rem proceedings, but at the federal level, the tax did not arise from property ownership and therefore it was necessary to protect the rights of third parties. In the event that third party interests are converted into cash proceeds following a foreclosure under I.R.C. Section 7403, compensation to the third party interest

148. Rodgers, 649 F.2d at 1125.
149. Rodgers, 103 S.Ct. at 2141.
150. I.R.C. §§ 7403(a) and (b) (1984).
151. I.R.C. § 7403(a) provides that to enforce its lien the government may subject any property of the delinquent, in which he has any right, title, or interest to payment of such tax or liability (emphasis added). I.R.C. § 7403 (b) provides for the joinder, as parties, of all persons having liens upon or claiming any interest in the property involved.
152. I.R.C. § 7403(c) (1984) allows the district court to adjudicate all matters involved and to finally determine the merits of all claims to and liens upon the property.
153. Rodgers, 103 S.Ct. at 2142-43.
154. Ad valorem property taxes are those taxes "levied on property or an article of commerce in proportion to its value, as determined by assessment or appraisal." Black's Law Dictionary 48 (5th ed. 1979).
156. Rodgers, 103 S.Ct. at 2143.
holders is provided for in I.R.C. Section 7403(c).\textsuperscript{157} Third party compensation would be based upon the relative interests held by the third parties, and the United States would receive the proceeds of sale proportional to the interest held by the delinquent taxpayer.\textsuperscript{158}

In an effort to provide guidance for the district courts,\textsuperscript{159} the Court provided a hypothetical formula that could be applied in determination of just compensation for the taking of a third party's property.\textsuperscript{160} The illustration provided assumed that a homestead estate was an economic equivalent of a life estate and it also assumed that a non-delinquent spouse would continue to occupy the homestead property until death.\textsuperscript{161} According to that illustration, if a federal tax lien resulted in foreclosure against the homestead property, the non-delinquent spouse would be entitled to most of the proceeds of sale as compensation,\textsuperscript{162} the government receiving a minimal amount.\textsuperscript{163}

In summary, having concluded that I.R.C. Sections 6321 and 7403 provide for the sale of the homestead in its entirety so long as third

\textsuperscript{157} The "taking" of a property interest is compensated by way of a distribution of the proceeds of sale according to the interest of the parties and of the United States. I.R.C. § 7403(c) (1984). \textit{See supra} notes 65-77 and accompanying text regarding the priority of federal tax liens over other liens.

\textsuperscript{158} \textit{Rodgers}, 103 S.Ct. at 2144.

\textsuperscript{159} The method of distribution required by I.R.C. § 7403 was not before the court in either \textit{Rodgers} or \textit{Ingram}.

\textsuperscript{160} \textit{Id.} at 2145-46. The Court seemingly confused third party interests with homestead interests. Third parties are compensated according to the findings of the court in respect of the interests according to Section 7403(c). Homestead interests created under state law will result in separate and distinct computation of the amount of compensation.

\textsuperscript{161} The Court's illustration used an 8% discount to calculate the value of the "life estate" for three hypothetical non-delinquent surviving spouses, aged 30, 50, and 70 years, each holding a homestead estate.

\textsuperscript{162} Under the Court's illustration an 8% discount rate was applied in calculating the value of the economic life estate. Assuming, for example, that the homestead property was worth $100,000, the annual income from the property would be $8000 ($100,000 multiplied by 8%). If the non-delinquent spouse was age 30 at the time, approximately 97% of the proceeds of sale would be due as compensation for the homestead estate. (The multiplier for an immediate whole life annuity at 8% for an individual, aged 30 is 12.1774. This factor multiplied by $8000 yields $97,419 or 97% of the total homestead value). The compensation assumes that the non-delinquent spouse would accept payment of a lump sum in commutation of a right to income for life.

\textsuperscript{163} The Court based its illustration on \textit{ARK. STAT. ANN.} § 50-705 (Supp. 1983). The statute provides for the computation of an immediate whole life annuity which assumes that a lump sum will be paid in commutation of a right to income for life. Applying this principle to a homestead situation, would view the right to occupy a homestead giving rise to an annual stream of income in an amount equal to the homestead value. Once an annual valuation is determined, a mechanical computation results in the amount of compensation due to the non-delinquent spouse. \textit{See also}, Treas. Reg. § 20.2031-10 (1984). In his dissent, Blackmun, J., questioned the presentation of this illustration as a possible means of compensation to the non-delinquent spouse. According to Justice Blackmun, allowing the non-delinquent spouse to retain her possession of the property until the homestead interest was extinguished by death, abandonment or conveyance would yield the government an amount not significantly different from the yield under the majority's approach. \textit{Rodgers}, 103 S.Ct. at 2158-59 (Blackmun, J., dissenting).
parties received just compensation, the Court reasoned that full application of I.R.C. Section 7403 was proper.\textsuperscript{164} The basis provided for reaching this conclusion was that I.R.C. Section 7403 was more advantageous to the government than other remedies. Among the advantages mentioned were that the government could seek the highest return possible through a sale of the entire interest in the homestead property.\textsuperscript{165} Although a greater return would necessarily follow from the sale of an entire interest, the government was not assured that it would receive greater proceeds from the sale.\textsuperscript{166} In terms of non-government advantages mentioned were the protection of third party rights by allowing them to receive just compensation and the assurance that the government will not receive more from the proceeds than an amount proportional to the delinquent taxpayer's interest.\textsuperscript{167}

The court of appeals in both \textit{Rodgers} and \textit{Ingram} held that because the Texas homestead laws granted special protections, the homestead property was immunized from the reach of I.R.C. Section 7403.\textsuperscript{168} Although earlier decisions held that state law would govern the nature of property interests or rights held by the delinquent taxpayer,\textsuperscript{169} the Supreme Court chose to ignore prior precedent and, instead, relied on the interpretation given I.R.C. Section 7403 in the court of appeals' cases of \textit{United States v. Overman}\textsuperscript{170} and \textit{Herndon v. United States}.\textsuperscript{171} In both \textit{Overman} and \textit{Herndon}, state law was found to be an ineffective bar against foreclosure against the entire property interest. The Court found further support for the premise that state homestead rights could not prevent I.R.C. Section 7403 from reaching the entire property interest. Under the supremacy clause,\textsuperscript{172} federal law would preempt state law.\textsuperscript{173} As long as the non-delinquent property owners received adequate compensation for their property loss, "no further deference to state law [was] required, either by [Section] 7403 or by the Constitution."\textsuperscript{174}

Under I.R.C. Section 7403, although certain provisions are

\begin{enumerate}
\item[164.] \textit{Rodgers}, 103 S.Ct. at 2145.
\item[165.] \textit{Id.}
\item[166.] \textit{See supra} note 163.
\item[167.] \textit{Rodgers}, 103 S.Ct. at 2145.
\item[168.] \textit{Rodgers}, 649 F.2d at 1127; \textit{Ingram}, 649 F.2d at 1132.
\item[170.] 424 F.2d 1142 (9th Cir. 1970).
\item[171.] 501 F.2d 1219 (8th Cir. 1974).
\item[172.] \textit{U.S. Const.} art. VI, cl. 2.
\item[173.] \textit{Rodgers}, 103 S.Ct. at 2147.
\item[174.] \textit{Id.}
mandatory in their application, the courts have discretionary authority to authorize a sale of homestead property. Upon adjudication of all matters and determination of the merits, a court may decree the sale of homestead property. The Court realized that a forced sale was not absolutely required in all instances, but there were virtually no circumstances in which it would be permissible to refuse authorization of a sale simply to protect the interests of a delinquent taxpayer, let alone the interests of third parties. Because there were virtually no circumstances where a court could not force a sale of homestead property to satisfy a tax lien, the Court provided four factors to be considered before ordering a sale of property. First, consideration should be given to the extent to which the government’s financial interest would be prejudiced by a sale of only the delinquent taxpayer’s interest in the property. Second, applying state law, a court should consider what, if any, legally recognized expectations a third party would have in the property so that a partial interest in the property would not be sold. Third, prejudice to a non-delinquent third party such as dislocation costs and the potential that the party will be undercompensated must also be considered. Finally, a court should consider the relative character and nature of the property interests held by the non-delinquent taxpayer.

Dissenting Opinion

In his dissenting opinion, Justice Blackmun concluded that I.R.C. Section 7403 conferred only the authority to sell jointly owned property to the extent that the taxpayer’s interest would allow him to so

175. A court is required to adjudicate all matters involved with regard to the lien enforcement and to determine the merits of all claims and liens upon the property.

176. Rodgers, 103 S.Ct. at 2149.

177. Id. at 2151.

178. Id. at 2151-52.

179. Id. at 2151. Among the factors to be considered are fair market value and the inability to obtain at least one-half that amount in a forced sale of a one-half interest in a homestead estate. In those instances where the proceeds of sale would exceed the amount of delinquency, no prejudice to the government’s financial interest would result. Id. at 2151, n. 40.

180. Id. For example, would a cotenant be able to partition the property or to resist a partition.

181. Id. at 2152. Assuming that courts will follow the Court’s computation illustration, under compensation will be prevalent. The use of actuarial tables to determine amounts of compensation due to third parties in certain instances results in disparate treatment. Id. at 2148.

182. Id. at 2152. Absence of a present possessory interest would allow for a forced sale, but where a non-delinquent taxpayer possessed a majority interest in the property, a forced sale would not be advisable.

183. Id. at 2152-61, Blackmun, J., dissenting. The dissent concurred in part with the holding that Section 7403 grants the power to sell property not belonging to the taxpayer in limited situations.
do in the absence of a forced tax sale. The dissent also believed that where a non-delinquent taxpayer enjoyed an indestructible state property right, the property right was an effective bar against a forced sale entitling the non-delinquent taxpayer to continue in possession of the lien property. The dissent reached its conclusions by first examining the rights that a lienholder enjoyed at common law. Next the broad interpretation given Mansfield v. Excelsior Refining Co., which the majority stated was "on all fours" with its holding in Rodgers, was criticized. Finally, the dissent suggested that the result of recognizing state property rights as a bar against foreclosure of a federal tax lien would not yield a different result than non-recognition of state property rights and yet greater protections are provided to the non-delinquent taxpayer. At common law a lienholder had no greater rights in property than the debtor himself had at the time that the lien arose. The rights that the debtor held in the property were determined according to state property law and the debtor would merely step into the delinquent taxpayer’s shoes. This interpretation that the government assumed no greater rights than the tax debtor held was consistent with commentaries that stated that state property rights would govern the position the government took with regard to its interest in the lien property. Since Texas law conferred an absolute right of use and possession of the homestead property for life, it would reason that the federal tax collector stepped into the tax debtor’s shoes and assumed his rights in the property. Under this assumption, Lucille Rodgers was entitled to an absolute right of use and possession and the federal government’s lien on one-half of the property was subordinate to Rodgers’ homestead right.

Although the majority interpreted Mansfield v. Excelsior Refining

184. Id. at 2153.
185. Id.
186. 135 U.S. 326 (1890).
187. Rodgers, 103 S.Ct. at 2142, n. 17. The Court did not rest its decision on a broad reading of Mansfield, but it found Rodgers to be “on all fours” with the decision in Mansfield.
188. Id. at 2158-59.
189. Id. at 2153.
190. Id.
191. See, e.g., Anderson, Federal Tax Liens—Their Nature and Priority, 41 CALIF. L.REV. 241, 250 (1953); Clark, Federal Tax Liens and Their Enforcement, 33 VA. L.REV. 13, 17 (1947); Reid, Tax Liens, Their Operation and Effect, 9 N.Y.U. INST. FED. TAX. 563, 568 (1951). In these articles a common premise is that the tax lienor takes no greater rights than those possessed by the tax debtor, with the tax debtor’s rights determined according to state law. See, PLUMB, FEDERAL TAX LIENS 38 (1972).
192. Rodgers, 103 S.Ct. at 2155.
to stand for the contention that the government could seek a judicial sale of the entire property interest under I.R.C. Section 7403 and its predecessor, the dissent viewed the majority's interpretation of Mansfield as expanding the reach of I.R.C. Section 7403 beyond real and personal property interests to include equitable interests in real property held by delinquent third parties. Under the majority's broad interpretation of Mansfield, the government would necessarily possess greater rights in the property than the tax debtor possessed at common law and the dissent found no prior precedent to support such expansion of governmental power.

Finally, the dissent addressed the probable results that would arise from the majority's interpretation that I.R.C. Section 7403 assured prompt and certain collection of delinquent taxes by a forced sale of property held by the taxpayer. Allowing a taxpayer to assert state property rights would not impede the certain collection of delinquent taxes, but the collection would not be prompt. Certainty of collection is provided under I.R.C. Section 7403(d) which allows for the appointment of a receiver during the pendency of the lien to supervise the property and to protect the government's interest in the property. Furthermore, certainty of collection in terms of the amount that the government could realize from the proceeds would be equivalent to the discounted present value of the property value. Recognizing state property rights in homestead property would yield an amount equivalent to an amount that would be recognized from a forced sale. Federal recognition of state homestead rights as a bar against lien enforcement would be consistent with the rights that the debtor held in the property. Since a lienholder would take no greater rights than the debtor held in the property, the federal government would not be able to foreclose on the property to satisfy its lien against a non-delinquent

193. 135 U.S. 326 (1890).
194. Rodgers, 103 S.Ct. at 2141, n. 17. In Mansfield the Court addressed the issue of whether by way of an administrative levy the government could sell property owned by a non-delinquent third party. Although the property owner's waiver gave the government priority over all claims to the property and full title in the event of a foreclosure, the Court held that the waiver provided no more than a right to sell the property by way of a judicial sale. Mansfield, 135 U.S. at 340.
195. Rodgers, 103 S.Ct. at 2158. Because Section 7403 allows for the enforcement of a federal tax lien against any interest held by the taxpayer, the dissent reasoned that a judicial sale could occur when, for example, a tenant failed to pay his taxes, or where a holder of an easement failed to pay his taxes, or where a condominium or cooperative owner failed to pay his taxes. The government admitted that this outcome was in fact possible. Id. at 2158, n. 13.
196. Id. at 2158.
197. Id. at 2158-59.
198. Id. at 2159.
199. Id.
taxpayer’s property interest.\textsuperscript{200}

\textbf{ANALYSIS}

The Supreme Court agreed to hear \textit{Rodgers} to resolve the conflict that existed among the circuits. Before \textit{Rodgers}, it was unclear how state law would affect the enforcement of a federal tax lien where only one party was delinquent and the other party claimed some right to the lien property as created by state law. Prior to discussing the impact of \textit{Rodgers} on state homestead laws, it is necessary to examine the dichotomy that the courts found to exist between federal and state law. This will lead to a conclusion that the Court reached the wrong conclusion in \textit{Rodgers}. The majority opinion, though it considered all the relevant factors, is inconsistent in the conclusions that it reached. On the one hand it recognized state property rights and on the other it provided that the rights could be ignored. Furthermore, the Court provided for just compensation to non-delinquent third parties based on state defined property rights and yet the illustrated method of compensation limited the amount of compensation that the government will recover from the proceeds. The majority further extended the power to apply the enforcement procedure to any type of property interest held by a third party in contradistinction to the Internal Revenue Service’s own interpretation of the reach of I.R.C. Section 7403. A more reasoned approach to the extent of power vested in the federal government under I.R.C. Section 7403 is presented by the dissenting opinion.

In \textit{United States v. Bess}\textsuperscript{201} the Supreme Court examined the dichotomy of federal and state law with regard to the collection of delinquent taxes from a non-delinquent spouse. Although this case did not arise in the context of a lien upon homestead property, the Court held that since the federal tax lien created no property rights but merely attached federal consequences to rights created under state law, it was necessary to examine the property rights in terms of state law.\textsuperscript{202} A finding of sufficient rights in property under state law was necessary before attachment of federal tax liens could occur.\textsuperscript{203} The precedent of \textit{Bess} was not followed by the \textit{Rodgers} Court. Based upon the fact that the Court allowed a forced sale of the entire property, it is clear that the

\textsuperscript{200} This assumes that only one taxpayer is delinquent. If both taxpayers are delinquent, then according to \textit{Ingram} the government would be able to subject the interests of both taxpayers to a forced sale under Section 7403.

\textsuperscript{201} 357 U.S. 51 (1958).

\textsuperscript{202} \textit{Id.} at 55.

\textsuperscript{203} \textit{Id.} at 56-57.
Court viewed the federal tax lien as giving rise to property rights under which a forced partition could occur. Under the *Bess* rationale, the federal tax lien merely would attach federal consequences to the state property right, with attachment of the federal tax lien occurring only if there were sufficient rights in the property and then only to the extent or value of those rights. Applying the *Rodgers* rationale, as long as the delinquent taxpayer possessed some property rights, the federal government could attach those rights and exercise rights of ownership itself over the property in its entirety. Seemingly, under *Bess*, a homestead would create sufficient rights in the property but the attachment of the federal tax lien would affect only the delinquent taxpayer's interest in the property and not the entire property as *Rodgers* held.

*Aquilino v. United States* amplified the decision in *Bess*. In *Aquilino*, the Court held that state law controls the determination of the legal interest which the delinquent taxpayer had in the property to be subjected to a federal tax lien. The Court viewed the application of state law in determining the property interest as a traditional role delegated to the state and as necessary for the uniform administration of the federal revenue statutes.

Adhering to the *Bess-Aquilino* doctrine federal courts have consistently held that state law controls the nature of the legal interest in the property. While courts have agreed that state law controls the determination of the property interests held by the taxpayer, there has been disagreement over the enforcement of federal tax liens in light of the interests created under state law. Even in the area of lien enforcement, the *Bess-Aquilino* doctrine applied based on the nature of the state property right and its incidents of ownership.

In *Folsom v. United States*, the government sought to enforce its lien against a one-sixth undivided interest in property owned by the taxpayer. Although the trial court ordered a public sale of the jointly

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205. *Id.* at 512-13, quoting, Morgan v. Commissioner, 309 U.S. 78, 82 (1940).

206. *Id.* at 514. In his dissent, Justice Harlan agreed that under *Bess* the uniform application of federal tax liens did not require the courts to disregard state property concepts. *Id.* at 519 (Harlan, J., dissenting).


208. 306 F.2d 361 (5th Cir. 1962).
owned property, the appellate court held that a lienholder did not own or possess the incidents of property ownership necessary to support a partition of the property. This decision was consistent with Aquilino in that state law determined the property rights and federal law governed enforcement of tax liens. Absent an ownership interest in property, as defined under state law, there were no means available to enforce the tax lien.

Enforcement of federal tax liens when state homestead rights were involved also resulted in the application of the Bess-Aquilino doctrine. The courts that were confronted with state homestead rights as defenses against the enforcement of federal tax liens distinguished the state right into three categories: marital rights, exemptions or privileges, and present property interests.

In Weitzner v. United States the court held that a federal tax lien was valid and enforceable against homestead property. Construing Florida's homestead provisions the court found that marital rights were created to protect the head of a family by securing a shelter for him and the members of his family. The marital rights arose from a marital relationship where property was owned and occupied by the family at the time of death; a husband and wife relationship existed at the time of death; and the wife survived her husband. In the form of marital rights, the surviving spouse had no property rights that would prevent the enforcement of a tax lien against the property claimed as the homestead.

Exemptions and privileges are another form of state homestead rights. Like marital rights, exemptions and privileges provide no protection against enforcement of federal tax liens. In United States v. Heffron, even though community property was in question, California's homestead exemption did not preclude an attachment of a federal tax lien upon the entire homestead. Similarly, in Shaw v. United States, the court held that a husband's joint tenancy interest was subject to attachment of a federal tax lien, but only to the extent of the

209. Id. at 363-64.
210. Id. at 367-68.
212. Id. at 48.
213. FLA. CONST. art. X; FLA. STAT. ANN. §§ 731.27, 731.05 and 731.34.
214. Weitzner, 309 F.2d at 48.
215. Id.
216. Id.
217. 158 F.2d 657 (9th Cir.), cert. denied, 331 U.S. 831 (1947).
delinquent taxpayer's interest.\textsuperscript{219} In \textit{United States v. Overman},\textsuperscript{220} the court bifurcated the taxpayer spouse's community property into separate elements, namely, the taxpayer's interest and that which he held in real property owned in community with his wife. Applying I.R.C. Section 6321, the taxpayer's interest in property was subject to lien because it constituted rights to property under state law.\textsuperscript{221} The taxpayer's community interest was also susceptible to attachment by the federal tax lien but only to the extent of his one-half interest in the community property.\textsuperscript{222} Washington state law\textsuperscript{223} created an exemption that was ineffective against the enforcement of federal tax liens.\textsuperscript{224} Although \textit{Rodgers} involved a Texas statute and constitutional provisions that created a vested property interest, these cases are important because they reveal that state property rights govern the rights that the federal government took in the lien property.

\textit{United States v. Hershberger}\textsuperscript{225} involved a Kansas law\textsuperscript{226} that created a present property interest in the non-delinquent spouse. Under Kansas law, a homestead consisted of one acre of land located within city limits if occupied as a family residence. As interpreted by Kansas state courts, the homestead provisions created an existing estate in the homestead which granted the taxpayer's spouse an immediate enjoyment in the homestead property.\textsuperscript{227} The \textit{Hershberger} court distinguished itself from \textit{Shaw} and \textit{Weitzner} on the grounds that Kansas law expressly provided for a present property interest, while in \textit{Shaw} and \textit{Weitzner} state homestead laws conferred privileges and exemptions only. When an indivisible and vested interest in homestead property existed, the property could not be subjected to levy and sale to satisfy the delinquent spouse's federal tax liability\textsuperscript{228} so long as the non-delinquent spouse continued to meet the state homestead requirements.\textsuperscript{229} Although the Kansas Constitution provided that a homestead was not exempt from the sale for taxes,\textsuperscript{230} the sale was limited to those instances where the tax arose against the property involved and not to satisfy any


\textsuperscript{220} 424 F.2d 1142 (9th Cir. 1970).

\textsuperscript{221} \textit{Id.} at 1145.

\textsuperscript{222} \textit{Id.} at 1146-47.


\textsuperscript{224} \textit{Overman}, 424 F.2d at 1145-46.

\textsuperscript{225} 475 F.2d 677 (10th Cir. 1973).

\textsuperscript{226} \textit{KAN. CONST. art. XV, § 9. See also, KAN. STAT. ANN. § 60-2301 (1964).}

\textsuperscript{227} \textit{Hershberger}, 475 F.2d at 680, \textit{citing}, Helm v. Helm, 11 Kan. 19 (1873).

\textsuperscript{228} \textit{Id.} at 682, \textit{quoting}, Jones v. Kemp, 144 F.2d 478 (10th Cir. 1944).


\textsuperscript{230} \textit{KAN. CONST. art. XV, § 9.}
other type of tax liability incurred by the owner.231

In light of Rodgers, the interpretation of the Kansas homestead law in Hershberger is crucial to a proper interpretation and analysis of Rodgers and is necessary to reach a conclusion that the holding in Rodgers was incorrect. Hershberger adhered to the Bess-Aquilino doctrine and examined the property interest that existed under state law. Kansas law created an indivisible interest in the property which acted as a bar against the enforcement of the federal tax lien. One commentator concluded that recognition of state property rights as a bar against enforcement of federal tax liens would delegate the power to the states to not only determine what property rights existed in homestead property, but also to determine whether the federal government can enforce its lien against delinquent taxpayers.232 The misconception in this line of reasoning is that state law would forever bar enforcement of federal tax liens. The problem is not whether, but rather, when the federal government will be able to enforce its tax liens.

As both the majority and dissent recognized, adequate compensation would have to be provided to the non-delinquent spouse for the deprivation of her homestead estate.233 Under the majority’s illustration, the government would recover but a small fraction of the proceeds where a non-delinquent spouse held a vested property interest.234 Applying the dissent's method of allowing the non-delinquent taxpayer to retain possession of the lien property would yield the same result in terms of the present value of the proceeds of sale. Furthermore, allowing the non-delinquent taxpayer to retain possession and use of the property would result in uniform application of the enforcement provisions of the Code. As the Internal Revenue Service recognized, when owners of partial undivided interests in property became delinquent, the lien would attach only to the taxpayer's interest and a forced sale would not result.235 Allowing the non-taxpayer spouse to retain possession would be consistent with the Internal Revenue Service’s treatment

231. Hershberger, 338 F.Supp. 804, 808 (D.Kan. 1972). The in rem nature of such proceedings was also discussed in Rodgers, 103 S.Ct. at 2143. The Court compared the effect of in rem proceedings at the state level to the predecessor statute to Section 7403. Application of in rem proceedings against a taxpayer’s real property to satisfy federal tax liability would allow the federal tax collector to have some of the same advantages enjoyed at the state level in tax enforcement. Rodgers, 103 S.Ct. at 2142-43. See also, Rogge, The Tax Lien of the United States, 13 A.B.A.J. 576, 577 (1927).


233. Rodgers, 103 S.Ct. at 2144-45, 2159.

234. Id. at 2144-45.

of partial undivided property interests in property and the amount of proceeds recovered would not be significantly different than those realized from an immediate sale of the homestead.

Further proof that the Court reached the wrong conclusion in Rodgers is the reliance on cases that did not involve homestead property interests. The Court’s conclusion that the government could seek the sale of the entire property under I.R.C. Section 7403 was premised on lower court decisions that concerned the sale of jointly held property to satisfy the tax liability of one of the joint owners. Where joint ownership of property exists, the four unities of ownership—possession, interest, title and time, also exist, and the interest of the delinquent taxpayer could be subject to foreclosure. With a homestead interest, only the unity of possession exists and a forced sale of the entire homestead interest cannot arise from the unity of possession alone. The unity of possession together with some legal interest in the property may give rise to a lien upon the homestead interest, but this lien would not affect the rights of others in the homestead. Essentially, the lienholder would step into the debtor’s shoes and assume the debtor’s interest and rights in the property. Since a homestead could not be conveyed without the consent of both the lienholder and the non-delinquent spouse a forced sale could not occur.

The Court provided an illustration to demonstrate the computation of compensation due to the non-delinquent spouse for the taking of the homestead property. The problems that can arise from the application of this illustration include valuation and compensation problems. In terms of valuation, fair market value should be applied, but the district court would only have the proceeds of sale available for distribution. Because a forced sale arises from the enforcement of a federal tax lien, a willing buyer and a willing seller necessary to arrive at fair market value would not be parties to the sale.


238. Id. at 25-26.

239. 1 JONES, LAW OF LIENS, § 9 (1888).

240. Rodgers, 103 S.Ct. at 2145.

241. Fair market value is the “price at which property would change hands in a transaction between a willing buyer and a willing seller, neither being under compulsion to buy nor to sell and both being informed” of all the relevant circumstances. Palmer v. Commissioner, 523 F.2d 1308, 1310 (8th Cir. 1975) (emphasis added), quoting Hamm v. Commissioner, 325 F.2d 934, 937 (8th Cir. 1963), cert. denied, 377 U.S. 993 (1964), quoting O’Malley v. Ames, 197 F.2d 256, 257 (8th Cir. 1952).
of a willing buyer and seller needed to arrive at fair market value, even under the three valuation approaches used by appraisers,242 a just compensation to the non-delinquent spouse would not be yielded. Fair market value would be known but the proceeds of sale would be subject to the district court's findings in respect to the interests of the parties and the United States.243

Further problems would arise from the application of actuarial tables to compute the compensation due to the non-delinquent taxpayer. The application of actuarial tables provides the courts with a means to determine the percentage of the proceeds due as just compensation to the non-delinquent spouse. This computation assumes that the non-delinquent spouse would accept a single lump sum payment in commutation of a right to occupy the homestead for life. Furthermore, the computation ignores the fact that under I.R.C. Section 7403(c) the proceeds are distributed in accordance with the claims and interests of all parties and not to the non-delinquent taxpayer alone. In addition, the possibility of out-living actuarial estimates and the rate of interest used in conjunction with life expectancy tables could also result in under compensation. Wide fluctuations in interest rates would necessarily prevent uniform application of the Court's decision in Rodgers. Though an argument can be made in favor of applying actuarial estimates in the determination of the compensation due the non-delinquent spouse, the precedent for such application does not exist. In Estate of Christ v. Commissioner,244 the United States Court of Appeals for the Ninth Circuit upheld the use of actuarial tables to compute the value of a life estate in a dwelling house that had become a trust asset.245 The argument against application of an actuarial estimate in a

242. Appraisers commonly think of value in three ways:
1. The current cost of reproducing a property less depreciation from all sources, that is, deterioration and functional and economic obsolescence.
2. The value which the property's net earning power will support, based upon a capitalization of net income.
3. The value indicated by recent sales of comparable properties in the market.

The three approaches—cost, income and market data—are based on these three facets of value. In the majority of... assignments, the appraiser utilizes all three approaches.

United States v. Eden Memorial Park Ass'n., 350 F.2d 933, 935 (9th Cir. 1965), quoting, THE APPRAISAL OF REAL ESTATE, American Institute of Real Estate Appraisers (1964).

243. I.R.C. § 7403(c) provides that where the district court decrees a sale of the property that the proceeds are distributed according to the findings of the court in respect of the interests of the parties and the United States. If the sale occurs to satisfy a first lien held by the United States, the United States may bid at such sale the sum "not exceeding the amount of such lien with the expenses of sale." According to this provision, a minimum bid equal to the amount of the lien may be bid by the United States.

244. 480 F.2d 171 (9th Cir. 1973).
245. Id. at 174.
Rodgers situation is that unlike an annuity, the valuation of a homestead estate does not involve the determination of taxable income. In Christ, the court was concerned with the collection of taxes based on the value of certain property, while in Rodgers the Court was concerned with the collection of taxes by the sale of property. The application of actuarial estimates in the latter situation does not follow prior precedent.

The impact on state homestead rights would also be great. Though the rights were created to protect the homestead from the reach of creditors, applying the Court's holding that entitles the Internal Revenue Service to seek a sale of the entire property removes the protections that originally existed at the state level. In Illinois, for example, a homestead to the extent in value of $7,500 is "exempt from attachment, judgment, levy or judgment sale for the payment" of debts or other purposes. The exemption continues after the death of the homesteader and accrues to the benefit of the surviving spouse. Because the provisions of I.R.C. Section 7403(b) provide that all persons with liens upon or claiming any interest in the property involved be made parties to the action, when the distribution of the proceeds is made according to the findings of the court in respect of the interests, the protections afforded under state homestead law cease to exist. I.R.C. Section 6323 established the priority of liens that are paramount and subordinate to the federal tax lien. It would follow that in the event of a forced sale of homestead property, lienholders with priority and the federal government would exercise their full rights to the proceeds, even though the lienholders would virtually never be able to recover by way of bringing a forced sale of the property themselves.

CONCLUSION

The decision in United States v. Rodgers will result in many far reaching results that the Court failed to recognize when it allowed the government to seek the sale of an entire property interest without regard to the extent of ownership interest held by the delinquent taxpayer. In addition to ignoring prior precedent and a role that was traditionally reserved to the states, the Court failed to provide for adequate compensation to those individuals whose property interests were to be subjected to the forced sale. Furthermore, the Court provided the

federal government with greater power than was intended to exist under the statute and the extension of this power came at the expense of state created protections against the enforcement of judgments against property that was protected from ordinary creditors at the state level.