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# Marriage tax foreclosure alert

**The IRS can foreclose on a married couple's jointly owned property even though only one spouse owes back taxes.**

By David Ellis, CPA  
*Guest Contributor*

In most instances when two people join in marriage, it results in a lifetime of sharing. They share life's triumphs and tragedies great and small. Sometimes, as in the case of Philip and Sharon Jackson, they even share the consequences of each other's separate tax debt.

A jury found that William Philip Jackson was the recipient of \$946,984 in taxable income from Jackson Brothers Tire, and that he was liable for the concomitant statutory penalties and interest for 1998 through 2002. Further, at trial the court granted judgement as a matter of law in favor of the IRS that Mr. Jackson could not deduct \$477,500 in charitable contributions.<sup>1</sup>

Including penalties and interest, Mr. Jackson's federal income tax liability totaled \$2,396,800 as of August 1, 2018. The court entered final judgement accordingly. It should be noted that the judgement was only against Philip Jackson and did not name his wife, Sharon Jackson. Presumably the couple filed separate returns for the years at issue, or they had not yet married. The court regardless found that Philip Jackson and his wife, Sharon Jackson, were the legal and equitable owners of four properties, and that each of the properties was encumbered by federal tax liens solely attributable to Philip Jackson's separate tax debt, which created a superior interest for the government in each of the properties.

The IRS moved the court to order foreclosure under IRC §7403, sell the properties, and distribute the proceeds as follows:

- To the IRS for administrative fees and cost;
- To Newton County for payment of unpaid property taxes;
- One-half of the remaining proceeds to Sharon Jackson;
- One-half of the remaining proceeds to satisfy the IRS judgement amount against Philip Jackson; and
- Any remaining amounts to Philip Jackson.

The court agreed with the IRS and also went to the trouble to point out that "Although the definition of 'underlying property interest' is left to state law, the consequences that attach to those interests is a matter left to federal law."<sup>2</sup>

The court then reminded us that "federal liens may attach to property that cannot be unilaterally alienated."<sup>3</sup> In the instant case, since Missouri law allows jointly owned assets to be sold for tax debts, and federal law provides the mechanism thereto, the only remaining issue up for debate was how the proceeds from the sale were to be distributed.

The Jacksons objected to the government's proposed order of proceeds distribution because it unduly diminished Sharon Jackson's interest in the properties, since such interest was to be reduced by the payments to the IRS and the Newton County tax collector prior to Mrs. Jackson receiving her share of the proceeds. In other words, Mrs. Jackson argued that she should be paid from the gross proceeds, and the administrative cost and outstanding taxes should be paid out of Mr. Jackson's half; or to put it another way, from her perspective half of a whole pie is better than half of a pie from which somebody else has already taken a bite.

The IRS did in fact concede that "Section 7403 does not require a District Court to authorize a forced sale under absolutely all circumstances, and some limited room is left in the statute for the exercise of reasoned discretion."<sup>4</sup> However, the court pointed out that in cases where the interest of third parties are involved, such reasoned discretion is governed by four nonexhaustive factors:

"Whether the Government's financial interest would be prejudiced if it were regulated to a forced sale of the partial interest actually liable for the delinquent taxes"

With respect to this factor the court found that "as a practical matter, if Plaintiff foreclosed on Philip Jackson's interest only, Sharon Jackson would retain her interest in the properties. Thus, the sale of Philip Jackson's interest would not decrease the judgement amount Philip Jackson owes to Plaintiff."

“Whether the third party might incur prejudice in the way of dislocation costs and/or under compensation”

Here, the court ruled that since Mrs. Jackson was equally liable for any outstanding property taxes, she would suffer no injury if such taxes were deducted from the gross proceeds. In terms of the Jacksons’ argument that Mrs. Jackson’s interest should not be reduced by the administrative cost to the IRS, the court noted that the Jacksons cited no legal authority for the premise that the sale cost for the properties should be borne by the government.

“Whether the interested third party would have had an expectation that his or her interest would not be subject to a forced sale”

Here the court ruled that Mrs. Jackson was not entitled to any such expectation. Although the record does not go into any detail, apparently there was some hanky-panky involving a fraudulent transfer of the properties in which Mrs. Jackson was a participant. In the court’s view, such conduct “tilts the balance of legal expectation against her.”<sup>5</sup>

“Whether the character and value of the third party’s interest in the property is comparably greater than the interest that is subject to forced sale”

The court yet again decided that this was not a factor that should preclude the forced sale of the properties because Mr. Jackson’s and Mrs. Jackson’s interests in the properties were equal, and foreclosure could net the government up to one-half the value of the properties to apply toward Mr. Jackson’s tax judgement.

Having dispensed with the above formalities, the court ruled that Mr. and Mrs. Jackson were the legal and equitable owners of the subject properties, which were encumbered by valid and substituting federal tax liens that arose at the time federal income tax assessments were made against Mr. Jackson for his sole 1998–2002 federal income tax liability. The court thus ordered that the federal tax liens be enforced on the properties and the proceeds disbursed in the manner proposed by the IRS.

Total time elapsed from the time the taxpayer filed his 1998 tax return until the tax gavel came down was almost 20 years, proving what any good tire salesperson already knows ... even a slow leak will eventually run flat.

### About the Author

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<sup>1</sup> *U.S. v. William Philip Jackson, et al.* (January 30, 2019) 3:16-CV-05096-BCW

<sup>2</sup> *United States v. Mitchell* (1971) 403 US 190

<sup>3</sup> *United States v. Craft* (2002) 535 US 274, 284

<sup>4</sup> *United States v. Rodgers* (1983) 461 U.S. 677, 706

<sup>5</sup> *United States v. Bierbauer* (1991) 936 F.2d 373, 376