

Matter of Voelker

Court of Appeals for the Seventh Circuit
42 F.3d 1050 · December 12, 1994

FLAUM, Circuit Judge.

The debtor, Mitchell Voelker, appealed from a decision of the District Court holding that the Internal Revenue Service's ("IRS") tax lien extended to his personal property exempt from levy under 26 U.S.C. § 6331. We affirm.

I.

Mitchell Voelker filed a voluntary Chapter 13 bankruptcy petition on July 29, 1992. On November 19, 1992, the IRS filed a proof of a secured claim for delinquent taxes in the amount of \$27,736, covering the years 1984 through 1989. Voelker objected to this ***1051** claim, contending that the IRS had a secured claim only in the amount of \$2,471, the value of his unencumbered assets less \$825.00 worth of personal property, including clothing, hand tools, a lawnmower, a weedeater, and a bow and arrows, which were exempt from levy under 26 U.S.C. § 6331. Voelker argued that because this property was exempt from levy, it was likewise exempt from the federal tax lien. The IRS objected, claiming that under 26 U.S.C. § 6321 it had a lien on all of Voelker's property. Voelker then amended his Chapter 13 plan to provide that he would surrender the property at issue to the IRS if a court determined that the lien extended to the property.

The bankruptcy court held that the IRS's lien did not attach to Voelker's exempt property. In *Re Voelker*, 164 B.R. 308 (Bkrtcy.W.D.Wis.1993). It noted that "[p]ersonal property exemption statutes should be liberally construed in order to carry out the legislature's purpose in enacting them — to protect debtors." *Id.* at 312 (citations omitted). It reasoned that § 6331's definition of levy as including "the power of distraint and seizure by any means" precluded the lien from attaching to the exempt property. *Id.*

The district court, however, reversed the bankruptcy court's decision. In an unpublished opinion, the district court found that the plain language of § 6321 led to the conclusion that the federal tax lien did attach to property exempt from levy.

II.

We review questions of law de novo. *Matter of West*, 22 F.3d 775, 777 (7th Cir.1994). When interpreting a statute, "[i]f the statute is unambiguous, we must enforce the plain meaning of the language enacted by Congress." *Family & Children's Center, Inc. v. School City of Mishawaka*, 13 F.3d 1052, 1060 (7th Cir.), cert. denied, — U.S. —, 115 S.Ct. 420, 130 L.Ed.2d 335 (1994). This court "will look beyond the express language of a statute only where that statutory language is ambiguous or where a literal interpretation would lead to an absurd result or thwart the purpose of the overall statutory scheme." *United States v. Real Estate Known as 916 Douglas Ave.*, 903 F.2d 490, 492 (7th Cir.1990), cert. denied sub nom. *Born v. United States*, 498 U.S. 1126, 111 S.Ct. 1090, 112 L.Ed.2d 1194 (1991).

Section 6321 states:

If any person Hable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that many accrue in addition thereto) shall be a Hen in favor of the United States upon

all 'property and rights to property,

whether real or personal, belonging to such person.

26 U.S.C. § 6321 (emphasis added). The Supreme Court has noted that this language “is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have.” *United States v. National Bank of Commerce*, 472 U.S. 713, 719-20, 105 S.Ct. 2919, 2924, 86 L.Ed.2d 565 (1985). “Stronger language could hardly have been selected to reveal a purpose to assure the coHection of taxes.” *Glass City Bank v. United States*, 326 U.S. 265, 267, 66 S.Ct. 108, 110, 90 L.Ed. 56 (1945). The language of -the statute unambiguously shows that the federal tax Hen attaches to all of a debtor’s property, without exception. Thus, we agree with the district court, and the majority of other courts addressing the issue, that the Hen attached to Voelker’s \$825.00 worth of personal property.¹ See, e.g., *United States v. Barbier*, 896 *1052 F.2d 377 (9th Cir.1990); *Matter of King*, 137 B.R. 43, 46 (D.Neb.1991); *United States v. Stowe*, 121 B.R. 549, 552-53 (N.D.Ind.1990); *In Re Schreiber*, 163 B.R. 327, 334 (Bkrtcy.N.D.Ill.1994); *In Re Lyons*, 148 B.R. 88, 92 (Bkrtcy.D.D.C.1992); *In Re Krahm*, 124 B.R. 78, 82 (Bkrtcy.D.Minn.1990); *In Re Hall*, 118 B.R. 671, 672 (Bkrtcy.S.D.Ind.1990); *Matter of Beard*, 112 B.R. 951, 953-54 (Bkrtcy. N.D.Ind.1990); *In Re Bates*, 81 B.R. 63, 64 (Bkrtcy.D.Ore.1987); *In Re Ridgley*, 81 B.R. 65, 69 (Bkrtcy.D.Ore.1987); *In Re Jackson*, 80 B.R. 213, 214-15 (Bkrtcy.D.Colo.1987).²

Contrary to Voelker’s assertions, 26 U.S.C. § 6331 does not alter this result. That section provides:

(a) Authority of Secretary — If any person hable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax ... by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a hen provided in this chapter for the payment of such tax.

(b) The term “levy” as used in this title includes the power of distraint and seizure by any means.

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Section 6331 says nothing about protecting this property from a hen, but merely from levy. Congress exempted this property from levy and has the capacity to do the same with the tax hen. It has chosen not to do so.

This dissimilarity in treatment makes sense, for as .the Ninth Circuit discussed in *Barbier*, a hen and levy are different things. “A levy forces debtors to relinquish their property. It operates as a seizure by the IRS to collect dehnquent income taxes.” 896 F.2d at 379. On the other hand, “a hen ... is merely a security interest and does not involve the immediate seizure of property. A hen enables the taxpayer to maintain possession of protected property while allowing the government to preserve its claim should the status of [the] property later change.” *Id.* Thus, if a debtor later sells the exempt property, the IRS could move to cohect the proceeds from the sale.

Having the IRS hen attach to exempt property does not, as Voelker contends, undermine § 6334’s goal of allowing the debtor to “retain some minimal personal effects necessary for living in our society,” because the IRS cannot summarily seize the property. The debtor retains possession and the hen simply determines

the amount he has to pay the IRS.⁴ Thus, the effect of our holding that the IRS's lien attaches to Voelker's personal property will require him to pay the IRS \$825.00 more than if the lien did not attach, either through larger monthly payments or through payments over a longer time period. As noted previously, however, Voelker has amended his plan to provide for the surrender of this property to the IRS, should we hold, as we do today, that the lien attaches. This action is not necessary, see 11 U.S.C. § 1325(a)(5), and does not alter our conclusion.

Extending the IRS's lien to property exempt from levy accomplishes both of Congress's goals: it increases the payment of delinquent taxes and allows the debtor to protect his property from summary, nonjudicial seizure. Because it is not absurd ***1053** that Congress would extend the lien to personal property yet preclude the levy of that property, we will not manufacture a different understanding of the "all property and rights in property" language in § 6321 and the exemption from levy in § 6331.

For the foregoing reasons, the decision of the district court is affirmed and the case remanded for further action.

Affirmed.

Footnotes

- 1 Voelker asserts that should we hold that the lien attaches, it must be released under 26 U.S.C. § 6325, which states that a lien must be released when "the liability for the amount assessed, together with all interest, has become unenforceable." We read this to mean that the underlying liability, not the lien securing it, must have become unenforceable in order to require releasing the lien. See Michael L. Saltzman, IRS Practice and Procedure ¶ 15.04[2] (2d ed. 1991) (the question is whether "the tax assessed is unenforceable as a matter of law (e.g., by the expiration of the period of limitations).") (emphasis added); William T. Plumb, Jr., Federal Tax Liens 43 (3d ed. 1972) ("unenforceability as a matter of law (e.g., the statute of limitations), not of fact" requires release) (emphasis in original). In any event, we do not decide whether the lien is unenforceable because we express no view as to whether the IRS can enforce it through other procedures, such as judicial foreclosure under 26 U.S.C. § 7403.
- 2 Like the district court, we do not find the cases to the contrary, cited by the appellant, persuasive. See *Matter of Riley*, 88 B.R. 906, 912 (Bkrtcy.W.D.Wis. 1987) (no analysis of issue); *Matter of Driscoll*, 57 B.R. 322, 327 n. 6 (Bkrtcy. W.D.Wis.1986) (Analysis consisting only of the sentence: "The debtor does receive a much smaller personal property exemption under IRC § 6334 (26 U.S.C. § 6334) which constitutes the sole exemption which may be claimed against a valid federal tax lien."); *In Re Ray*, 48 B.R. 534, 537-38 (Bkrtcy.S.D.Ohio 1985) (no analysis).
- 3 A lien does not itself act as a distraint and seizure so we do not, as Voelker contends we should, equate a lien with levy. We express no view as to whether this definition of levy prohibits other methods of collection, such as judicial foreclosure under 26 U.S.C. § 7403.
- 4 A chapter 13 debtor must satisfy the full amount of a secured claim, 11 U.S.C. 1325(a), which amount is determined by "the creditor's interest in the estate's interest in such property." 11 U.S.C. § 506(a). The debtor pays for this secured claim in monthly installments over three years. However, the bankruptcy court can, for cause, extend the repayment period by an additional two years, 11 U.S.C. § 1322(c), so that the debtor does not necessarily have to make larger monthly payments.