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Stuart T. Williams

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Federal Tax Lien—Is It Effective Against a State Homestead Exemption?

Today most states have homestead exemptions that place a family residence beyond the reach of creditors' remedies.¹ Typically, these exemptions are valid against all but a limited class of debts.² In this era of the omnipresent tax collector, a recurring question has been whether the state homestead exemption is effective against the federal tax lien.³ Since the nature and extent of the homestead exemption varies greatly from state to state,⁴ a comprehensive answer to this problem is not available. A recent case, *United States v. Hershberger*,⁵ represents one court's attempt to reconcile the competing interests of a state's homestead provisions and the federal government's desire for a uniform tax collection system.

Ralph and Esther Hershberger jointly owned real property, which they occupied as their residence, in Wichita, Kansas. In an attempt to satisfy a judgment against Ralph for over 28,000 dollars in unpaid taxes,⁶ the United States sought to foreclose its tax lien against Ralph's interest in the property.⁷ Esther claimed that her occupancy qualified

1. The states not having homestead exemptions are Connecticut, Delaware, Indiana, Maryland, New Jersey, Pennsylvania, and Rhode Island. See S. RIESENFELD, *CREDITORS' REMEDIES AND DEBTORS' PROTECTION* 232-33 (1967).

2. These debts are generally of two types: (1) obligations incurred in acquiring and preserving the homestead and (2) obligations for taxes. See generally Haskins, *Homestead Exemptions*, 63 HARV. L. REV. 1289 (1950).

3. INT. REV. CODE OF 1954, § 6321 provides:

If any person liable 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 may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

4. The exempted property may be described in monetary terms or acreage figures. Each state has its own requirements as to who may assert the exemption, when it can be claimed, and the type of property interest that is within its protection. See I AMERICAN LAW OF PROPERTY §§ 5.75-.84 (A.J. Casner ed. 1952).

5. 475 F.2d 677 (10th Cir. 1973).

6. Reducing a tax claim to judgment is not necessary for all tax collection efforts, but it tolls the six year statute of limitations on the federal tax lien indefinitely and is often advisable where there may be title or priority disputes. See W. PLUMB, *FEDERAL TAX LIENS* 49-51 (3d ed. 1972); Plumb, *Federal Tax Collection and Lien Problems*, 13 TAX L. REV. 247, 278-79 (1958).

7. INT. REV. CODE OF 1954, § 7403(a) provides:

Filing.—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 . . . may direct a civil action to be filed in a district court of the United States to enforce the lien . . . under this title with respect to such tax or liability or to subject any property, of what-

the residence as a homestead under Kansas law thus immunizing the property from seizure and sale.⁸ The district court agreed and granted summary judgment for the Hershbergers.⁹ On appeal, the Court of Appeals for the Tenth Circuit affirmed.¹⁰ Following the reasoning of the district court, the circuit court held that the homestead exemption created an indivisible property interest in Esther that precluded the government from foreclosing the lien as long as she occupied the property as her residence.¹¹

The federal tax lien is a major weapon in the government's tax collection arsenal. Arising automatically after a taxpayer refuses or neglects to comply with a tax assessment, the federal tax lien attaches to "all property or rights to property" belonging to the taxpayer.¹² Courts have generally followed the sweeping language of section 6321 and have upheld the lien's attachment to a broad range of property interests, including equitable and intangible interests, property normally exempt under federal and state laws, and after-acquired property the moment title passes to the taxpayer.¹³

Section 6321, however, creates no property rights but merely attaches federally defined rights to property interests created by state law.¹⁴ Thus, initially, a court will look to state law to determine the nature and extent of a taxpayer's property rights.¹⁵ If there is a suffi-

ever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability.

8. KAN. CONST. art. 15, § 9 provides:

A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. *Provided*, The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife

The constitutional provisions are essentially reiterated in KAN. STAT. ANN. § 60-2301 (1964).

9. *United States v. Hershberger*, 338 F. Supp. 804 (D. Kan. 1972).

10. *United States v. Hershberger*, 475 F.2d 677 (10th Cir. 1973).

11. *Id.* at 682.

12. See note 3 *supra*. For an excellent practical discussion of the creation and timing of the lien see W. PLUMB, *supra* note 6, at 10-18.

13. This listing is by no means exhaustive but merely intended to indicate the reach of § 6321. For a general discussion of property subject to the lien see 9 J. MERTENS, *THE LAW OF FEDERAL INCOME TAXATION* § 54.52 (rev. ed. 1971).

14. *E.g.*, *United States v. Bess*, 357 U.S. 51, 55 (1958) (Int. Rev. Code of 1939, ch. 36, § 3670, 53 Stat. 448, is the predecessor to INT. REV. CODE OF 1954, § 6321 and the language of the two sections is virtually identical).

15. *E.g.*, *Aquilino v. United States*, 363 U.S. 509, 512-14 (1960).

cient property interest for the lien to attach, the court will then look to federal law to determine the lien's effectiveness against competing interests.¹⁶ However, it is unclear whether the court must look to federal or state law to determine if the lien attaches to state property rights. The better conclusion would seem to be that federal law should determine the question of whether the lien attaches.¹⁷

The *Hershberger* court recognized the validity of the lien against Ralph's interest in the homestead,¹⁸ but turned its attention to Kansas law to determine the rights of Esther in the family residence. The Kansas Constitution and the statute enacting the homestead provision specify that the home cannot be alienated without the joint consent of both husband and wife and is exempt from forced sale except for "sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon."¹⁹ The court found no case on the issue of whether a homestead can be sold to pay for taxes not directly related to the family residence. Nevertheless, the district court had concluded that, since neither federal nor state income taxes had been adopted at the time the statute was enacted, the exception should be limited to property taxes on the home itself.²⁰ The circuit court accepted this reasoning²¹ and concluded

16. *Id.*

17. Language can be found in Supreme Court opinions supporting either position. *United States v. Bess*, 357 U.S. 51, 55 (1958) (federal tax lien "attaches consequences, federally defined, to rights created under state law"). In *Meyer v. United States*, 375 U.S. 233 (1963), the Court explicitly relied on *Bess* but said, "once the tax lien has attached to the taxpayer's state created interests, we enter the province of federal law;" and "state law controls the determination of what is included within the [meaning of] 'property or rights to property.'" *Id.* at 236, 238. See also *United States v. Durham Lumber Co.*, 363 U.S. 522, 526-27 (1960); *Aquilino v. United States*, 363 U.S. 509, 512-14 (1960). One student author concludes that the suggested meaning of *Bess* (federal law governs the attachment of the federal tax lien) was implicitly overruled by *Aquilino*. Note, 46 CORNELL L.Q. 624, 627 (1961). In a later treatment of this issue another commentator concludes otherwise. Comment, *Property Subject to the Federal Tax Lien*, 77 HARV. L. REV. 1485, 1485-87, 1490-91 (1964) (finds support for *Bess* in *Aquilino* and *Durham Lumber Co.*).

18. 475 F.2d at 679. It was stipulated in the district court that the lien attached to Ralph's undivided one-half interest in the homestead. 338 F. Supp. at 805. There is, however, language in the opinion of the court of appeals suggesting the opposite conclusion. "[Esther's] interest was separate and apart from her husband and therefore precluded the homestead from being part of the husband's estate." 475 F.2d at 682.

19. See note 8 *supra*.

20. 338 F. Supp. at 808. In most states the homestead is subject to a lien for taxes, while several permit the exemption to exclude only taxes on the homestead itself. Compare N.C. CONST. art. X, § 2(1), and ILL. ANN. STAT. ch. 52, § 3 (Smith-Hurd Cum. Supp. 1973), with OHIO REV. CODE ANN. § 2329.72 (Page 1953), and W. VA. CODE ANN. § 38-9-3 (1966).

21. 475 F.2d at 681.

that the homestead provision gave Esther a vested undivided one-half interest in the property.²² The court was aided in its conclusion both by an early Kansas case that described a wife's interest in the homestead as an "estate"²³ and by other cases in which the Kansas Supreme Court had stated that the homestead provision was intended to create more than "a simple exemption statute" and was to be construed liberally.²⁴

However, *Hershberger* cited no Kansas case holding that the homestead exemption created a "property right" in either spouse. The court rejected the argument that because a state court could divest either spouse of his or her homestead rights in a divorce action, the homestead "prior to divorce was not a vested property right."²⁵ Moreover, the court did not consider other Kansas law that described the interest in the homestead as a waivable benefit.²⁶ More to the point, the court's conclusion in this regard may have been unnecessary as the wife already possessed an undivided one-half interest in the home by virtue of her status as a joint tenant. The obvious suggestion is that the homestead exemption would give a spouse vested property rights in the homestead even if the other spouse held title as sole owner. Therefore, the key to the *Hershberger* opinion was not that the homestead exemption vested a property right, but that it created an indivisible interest in the property.

The real significance of this decision, though, lies in its holding that a federal tax lien against one spouse may not be enforced against his or her property rights in the homestead where the other spouse has an indivisible interest in the property. This means that state law not only defines what constitutes property rights within the language of section 6321, but also determines whether the federal government can enforce its lien against a delinquent taxpayer. It may be, as one authority suggests, that the "resolution of this issue may depend upon whether there is involved a single interest of the taxpayer who is subject to tax liability, or whether both spouses have an interest while only one is under a tax liability."²⁷

The treatment accorded the federal tax lien by other courts in relation to state homestead exemptions offers little clarification. In

22. *Id.* at 682.

23. *Helm v. Helm*, 11 Kan. 19 (1873).

24. *E.g.*, *West v. Grove*, 139 Kan. 361, 31 P.2d 10 (1934).

25. 475 F.2d at 680.

26. *See Schloss v. Unsell*, 114 Kan. 69, 71, 216 P. 1091, 1092 (1923); *cf. Cole v. Coons*, 162 Kan. 624, 641, 178 P.2d 997, 1008 (1947) (concurring opinion).

27. 9 J. MERTENS, *supra* note 13, at 205.

only two other jurisdictions have courts held that a homestead exemption protects one spouse from levy or foreclosure for the tax debt of the other spouse.²⁸ In one of these jurisdictions, Texas, there is a conflict in the cases;²⁹ and in the other, Oklahoma, the precedential value of the cases is subject to serious doubt.³⁰ A number of courts have enforced a tax lien against one spouse's interest in the homestead property;³¹ others have held the lien attachable to a single spouse's interest in the homestead property, but because of the nature of the action, make no mention of whether the lien could be enforced.³² The only principles that seem free from doubt are that a lien will always attach to a taxpayer's interest in the homestead,³³ and a homestead is not exempt from seizure for the joint tax liability of both husband and wife.³⁴

A brief look at other joint property interests recognized in various states and the susceptibility of these interests to the federal tax lien

28. *Jones v. Kemp*, 144 F.2d 478 (10th Cir. 1944) (Oklahoma); *Morgan v. Moynahan*, 86 F. Supp. 522 (S.D. Tex. 1949); *Bigley v. Jones*, 64 F. Supp. 389 (W.D. Okla. 1946); *Paddock v. Siemoneit*, 147 Tex. 571, 218 S.W.2d 428 (1949).

29. Compare *Morgan v. Moynahan*, 86 F. Supp. 522 (S.D. Tex. 1949), and *Paddock v. Siemoneit*, 147 Tex. 571, 218 S.W.2d 428 (1949), with *United States v. Stone*, 57-2 U.S. Tax Cas. ¶ 9864 (E.D. Tex. 1957), and *Staley v. Vaughn*, 50 S.W.2d 907 (Tex. Civ. App. 1932), and *Staley v. Hopkins*, 9 F.2d 976 (N.D. Tex. 1925).

30. The principal case, and the one relied on in *Hershberger*, is *Jones v. Kemp*, 144 F.2d 478 (10th Cir. 1944). The court in *Kemp* held that the Oklahoma homestead law did not create an "estate" in the wife but rather a "special and peculiar" interest, which prevents a tax lien against the husband from being enforced against the homestead. Nevertheless, the Oklahoma Supreme Court, on two different occasions has flatly stated that the Oklahoma homestead provision does not create any property rights in a spouse but merely a privilege of exemption from execution. *Evans v. Evans*, 301 P.2d 232, 234 (Okla. 1956); *Mercer v. McKeel*, 188 Okla. 280, 284, 108 P.2d 138, 141 (1940). As recognized by the *Hershberger* court itself, 475 F.2d at 682, state homestead laws conferring privileges and exemptions are subordinate to the federal tax lien. *Shaw v. United States*, 331 F.2d 493 (9th Cir. 1964); *Weitzner v. United States*, 309 F.2d 45 (5th Cir. 1962), cert. denied, 372 U.S. 913 (1963). Furthermore, the *Kemp* court held that Mrs. Kemp was not the lawful wife of Mr. Kemp at the time the tax lien attached and thus could not assert homestead rights. 144 F.2d at 481. The only other decision, *Bigley v. Jones*, 64 F. Supp. 389 (W.D. Okla. 1946), directly relied on *Kemp*.

31. E.g., *Weitzner v. United States*, 309 F.2d 45 (5th Cir. 1962), cert. denied, 372 U.S. 913 (1963); *United States v. Heffron*, 158 F.2d 657 (9th Cir.), cert. denied, 331 U.S. 831 (1947); *United States v. Olgeirson*, 284 F. Supp. 655 (D.N.D. 1968); *United States v. Tressler*, 66-1 U.S. Tax Cas. ¶ 9228 (S.D. Cal. 1966); *United States v. Heasley*, 170 F. Supp. 738 (D.N.D.), aff'd, 272 F.2d 947 (8th Cir. 1959); *Bedami v. Tomlinson*, 48 Am. Fed. Tax R. 1471 (S.D. Fla. 1954).

32. E.g., *Carter v. United States ex rel. D.I.R.*, 399 F.2d 340 (5th Cir. 1968); *Shaw v. United States*, 331 F.2d 493 (9th Cir. 1964); *Aronow v. United States*, 65-2 U.S. Tax Cas. ¶ 9692 (D. Mont. 1965); *Jamison v. Geers*, 35-1 U.S. Tax Cas. ¶ 9319 (W.D. Okla. 1935).

33. E.g., *Shambaugh v. Scofield*, 132 F.2d 345 (5th Cir. 1942); *United States v. Howard*, 296 F. Supp. 264 (D. Ore. 1968); *Birch v. Dodt*, 2 Ariz. App. 228, 407 P.2d 417 (1965).

34. E.g., *United States v. Estes*, 450 F.2d 62 (5th Cir. 1971).

proves useful. Tenancy by the entirety, peculiar to the husband and wife relationship and recognized in twenty-one states,³⁵ has proved particularly troublesome to the federal tax collector. Since legal title is vested in the fictional unity of marriage, neither spouse, nor his or her creditors, can force a partition.³⁶ A substantial minority of states recognizing tenancy by the entirety, however, permit creditors of one spouse to reach a half-interest in the estate, subject to the other spouse's rights.³⁷ In these states, the tax lien provides the federal government with the same rights as ordinary creditors. But in the majority of the states, the government is not only denied the right to levy upon or foreclose an entirety interest, but is also denied the protection of the lien.³⁸

The federal tax collector has fared better against the taxpayer's interests in joint tenancies and community property. In the case of joint tenancies, the government may enforce its claim against the delinquent taxpayer's interest by a sale of the whole property even though there are third parties whose interests are not subject to the lien.³⁹ Since the government's rights under the lien are no greater than those of the tax-

35. See generally 4A R. POWELL, *THE LAW OF REAL PROPERTY* ¶ 622-23 (1967).

36. *Id.* at ¶ 623; Annot., 75 A.L.R.2d 1172 (1961); Annot., 166 A.L.R. 969 (1947).

37. See note 36 *supra*.

38. See *Benson v. United States*, 442 F.2d 1221 (D.C. Cir. 1971); *Cole v. Cardozo*, 441 F.2d 1337 (6th Cir. 1971); *United States v. American Nat'l Bank*, 255 F.2d 504 (5th Cir.), *cert. denied*, 358 U.S. 835 (1958); *Raffaele v. Granger*, 196 F.2d 620 (3d Cir. 1952); *United States v. Hutcheson*, 188 F.2d 326 (8th Cir. 1951). This rule also extends to rents and profits derived from entirety property. See *Moore v. Glotzbach*, 188 F. Supp. 267 (E.D. Va. 1960). *Contra*, *Pilip v. United States*, 186 F. Supp. 397 (D. Alas. 1960).

Tenancies by the entirety have been harshly criticized as creating "a privileged sanctuary from the collection of federal taxes, a fictional bicephalous non-tax-paying personality which is permitted to accumulate wealth free of the citizenship obligations of either of the individuals who comprise the unit and for whose exclusive benefit it exists." Plumb, *Federal Liens and Priorities—Agenda for the Next Decade II*, 77 YALE L.J. 605, 636 (1968). For a more favorable view of entirety interests see Comment, *Federal Lien Provisions and State Law: The Problem of Giving Effect to Both in the Area of Joint Property Ownership*, 25 Sw. L.J. 456, 465 (1971).

In 1954 the House of Representatives made an effort to specifically include entirety interests within the scope of § 6321, but the Senate rejected the effort because it was "not clear what change in existing law would be made" by doing so. See H.R. 1337, 83d Cong., 2d Sess. 406 (1954); S. 1622, 83d Cong., 2d Sess. 575 (1954).

39. *United States v. Kocher*, 468 F.2d 503 (2d Cir. 1972), *cert. denied*, 411 U.S. 931 (1973); *United States v. Trilling*, 328 F.2d 699 (7th Cir. 1964); *United States v. Mosolowitz*, 269 F. Supp. 12 (D. Conn. 1967); *United States v. Anderson*, 66-2 U.S. Tax Cas. ¶ 9646 (D.S.C. 1966); *accord*, *Washington v. United States*, 402 F.2d 3 (4th Cir. 1968). *Contra*, *Folsom v. United States*, 306 F.2d 361 (5th Cir. 1962). Later cases in other circuits have rejected *Folsom* as misconstruing the language of section 7403. *United States v. Kocher*, *supra*; *United States v. Trilling*, *supra*. Additionally, there are other factors that suggest the case may be distinguishable on its facts. See Comment, 25 Sw. L.J., *supra* note 38, at 466.

payer,⁴⁰ the other joint tenants are protected to the extent that they receive their full share of the sale proceeds.⁴¹ Community property is treated similarly. Even though each spouse is considered to have a vested undivided interest in the community, the property is subject to sale to satisfy a lien against only one of them.⁴² Thus, in those cases where a delinquent taxpayer has a vested undivided interest in jointly owned property, the tax lien can be enforced, regardless of the fact that another person may have an equal or similar interest in the same property. The one exception appears to be in those states that do not subject tenancies by the entirety to creditor's claims.⁴³ There the lien is ineffective, not because state law prohibits enforcement, but because a taxpayer does not have a separate property interest to which the lien can attach.⁴⁴

Under this reasoning, Esther's vested undivided interest in the homestead should not have been an obstacle to enforcement of the lien. Similarly, characterization of that interest as an indivisible property right should not have barred the efforts of the federal government to reach legitimate property interests of the defaulting taxpayer. In *United States v. Overman*,⁴⁵ the argument was advanced that a Washington law that exempted community property from a husband's premarital debts was a rule of property law limiting "the extent and quality of his ownership rights" in the community.⁴⁶ Therefore, the defendant taxpayer contended that the tax lien could not be enforced against the husband's rights in the property. But even assuming the characterization of the Washington law as a property qualification was correct, the court said, "all that section 6321 requires is that the interest be 'property' or 'rights to property.' It is of no statutory moment how extensive may be those rights under state law, or what restrictions exist on enjoyment of those rights."⁴⁷

Clearly "[t]he attachment of a tax lien under section 6321 and the enforcement of the lien under section 7403 . . . present different

40. See, e.g., 9 J. MERTENS, *supra* note 13, at 192-93.

41. See, e.g., *United States v. Mosolowitz*, 269 F. Supp. 12 (D. Conn. 1967).

42. E.g., *Brodoy v. United States*, 455 F.2d 1097 (5th Cir. 1972); *In re Ackerman*, 424 F.2d 1148 (9th Cir. 1970); *United States v. Overman*, 424 F.2d 1142 (9th Cir. 1970); cf. *United States v. Mitchell*, 403 U.S. 190 (1971).

43. See notes 35-36 *supra*.

44. E.g., *United States v. Hutcheson*, 188 F.2d 326 (8th Cir. 1951) (husband's interest in a tenancy by the entirety "like the rainbow in the sky or the morning fog rising from the valley").

45. 424 F.2d 1142 (9th Cir. 1970).

46. *Id.* at 1145.

47. *Id.*

questions."⁴⁸ But once the lien attaches, the enforcement is purely a federal question.⁴⁹ The only property that is exempt from seizure for a tax debt is that immune from levy under section 6334(a).⁵⁰ The obvious problem with allowing state homestead exemptions to extend the minimal protection of Section 6334(a) is the inequities it would create among delinquent taxpayers. The Internal Revenue Code is designed to tax persons in equivalent positions equally. It would seem only fair to subject equally situated individuals to the same liabilities when they fail to pay their taxes. To do otherwise would mean that, depending on how each state characterizes its homestead exemption, one taxpayer's residence would be safe from the federal tax lien while another's would be vulnerable.

This disparity would be further aggravated by the maximum exemptions in each state. They range from nothing in those states that do not have homestead provisions to 20,000 dollars in California.⁵¹ Where the exemption is described in acreage rather than monetary terms, one taxpayer may be immunized to the extent of a modest bungalow while a neighbor's exemption could run into the hundreds of thousands of dollars. It may be argued that this is the result in those states that recognize and exempt tenancy by the entirety. But tenancy by the entirety is a common law property interest with deep roots in our Anglo-American heritage. Homestead exemptions, on the other hand, regardless of whether construed as vesting property rights, are constitutional and/or statutory overlays that can attach to almost any type of property interest.

Denying a taxpayer the protection of homestead exemptions when the government seeks to collect its tax dues may seem unnecessarily harsh. It is, however, no different than the treatment accorded other exemption laws designed to protect the impecunious. In bankruptcy, where state exemption laws are normally given effect,⁵² the federal lien can be enforced against property set aside for the bankrupt.⁵³ Disability insurance benefits under the Social Security Act,⁵⁴ alimony payments⁵⁵

48. *Id.*

49. *United States v. Bess*, 357 U.S. 51 (1958).

50. INT. REV. CODE OF 1954, § 6334(a). For a discussion of the limited nature of the exemption, see 9 J. MERTENS, note 13 *supra*, at § 49.192.

51. CAL. CIV. CODE § 1260 (West Supp. 1973).

52. Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

53. *United States v. Heffron*, 158 F.2d 657 (9th Cir.), *cert. denied*, 331 U.S. 831 (1947).

54. *Kane v. Burlington Savings Bank*, 320 F.2d 545 (2d Cir. 1963).

55. Rev. Rul. 89, 1953-1 CUM. BULL. 474; *Campbell v. Campbell*, 88 N.J. Super. 63, 210 A.2d 644 (1965).

and wages and salaries without a minimum for subsistence are⁵⁶ all subject to seizure.

The federal tax lien is wholly a federal creature and "matters directly affecting the nature or operation of [the lien] are federal questions, regardless of whether the federal statutory scheme specifically deals with them or not."⁵⁷ The language of the statute specifies that there shall be a lien on "all property or rights to property" without exception.⁵⁸ If state law were to govern the attachment, a state could place recognized property rights beyond the reach of the federal lien and, thus, produce undesirable vagaries in the federal tax collection effort. The underlying policy of federal taxation is to insure as much uniformity as possible.⁵⁹ By permitting federal law to govern, courts would be able "to subject to the lien the wide range of property interests commanded by the sweeping language of the statute, as well as to exclude some interests as not being within the statutory purpose."⁶⁰

In recent years, Congress has shown a tendency to expand the category of property exempt under section 6334(a).⁶¹ Hopefully, it will recognize the need for uniformity with respect to protection of the homestead and expand section 6334(a) to include provisions similar to the more progressive state homestead exemptions.

STUART T. WILLIAMS

Liability Insurance—The Movable Link Between Coverage Denial and Settlement Offers

Insurance litigation has produced uncertainty about a carrier's obligations when its insured has caused damages beyond policy limits; the insurer denies coverage to its insured because it believes, in good

56. *Antrun v. United States*, 127 F. Supp. 54 (D. Conn. 1953).

57. *United States v. Brosnan*, 363 U.S. 237, 240 (1960). The Court, however, recognized that when "Congress resorted to the use of liens, it came into an area of complex property relationships long since settled and regulated by state law." Thus the Court felt that in regards to divestiture of federal tax liens, where there existed well-established state procedures, state law should be adopted as a matter of federal policy. *Id.* at 241-42. *But see* Comment, 25 Sw. L.J., *supra* note 38, at 460 n.43.

58. INT. REV. CODE OF 1954, § 6321, *quoted in* note 3 *supra*.

59. *E.g.*, *United States v. Gilbert Associates, Inc.*, 345 U.S. 361 (1953); *Burnet v. Hamel*, 287 U.S. 103, 110 (1932).

60. Comment, 77 HARV. L. REV., *supra* note 17, at 1503.

61. *See* 9 J. MERTENS, *supra* note 13, at § 49.192.