

LOOKING AT GIFT HORSES: TRANSFEEE LIABILITY AND THE *BAPTISTE* CASES

Imagine that you have two clients sitting in your office. The clients are brothers. One lives locally and the other lives in a different state some 1500 miles away. The brothers are having difficulties with a tax issue concerning a transaction in which they are involved together. They have each received a deficiency notice from the Internal Revenue Service ("IRS") and they have lost an initial set of proceedings before the U.S. Tax Court. The brothers had been acting pro se, but have now come to you for advice. You have found no case law directly on point. You have found, however, one potentially helpful federal circuit case. The case is not from a circuit in which either brother lives, but the issue is closely related to the one facing the brothers and the holding supports their position. While less than certain of the final result, you at least expect that the outcome at the respective circuit court level (should the issue progress that far) would be the same for each of the brothers.

If the issue in question was the extent of transferee liability for federal estate taxes, your expectation might be incorrect. In 1994, the United States Courts of Appeals for the Eighth Circuit and the Eleventh Circuit addressed this issue in two separate cases, each named *Baptiste v. Commissioner*.¹ The cases arose out of the same transaction and involved two brothers, one a resident of Nebraska and one a resident of Florida.² The courts reached directly opposite conclusions on the extent of the transferee liability of each brother.³

Each circuit court held that the respective brother was liable for unpaid federal estate taxes from his father's estate because the brother had received assets that had been included in the father's taxable estate.⁴ The Eighth Circuit also held that the *extent* of the liability of Gabriel Baptiste, Jr. was limited to the value of the assets he had actually received, even though the unpaid estate tax liability then exceeded that

¹ See generally *Baptiste v. Commissioner*, 29 F.3d 1533 (11th Cir. 1994) [hereinafter *Baptiste III*]; *Baptiste v. Commissioner*, 29 F.3d 433 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1251 (1995) [hereinafter *Baptiste II*].

² See *Baptiste v. Commissioner*, 100 T.C. 252, 253 n.3 (1993) [hereinafter *Baptiste I*].

³ Compare *Baptiste III*, 29 F.3d at 1535, with *Baptiste II*, 29 F.3d at 438.

⁴ *Baptiste III*, 29 F.3d at 1538; *Baptiste II*, 29 F.3d at 437.

amount because of accrued interest.⁵ The Eighth Circuit based this holding on what it referred to as a plain language interpretation of statutory provisions in the Internal Revenue Code.⁶

The Eleventh Circuit concluded, however, that Richard Baptiste was liable for the full amount of the unpaid estate tax liability, even though that amount exceeded the value of the assets he had received.⁷ The court reasoned that the interest that had accrued on the unpaid estate taxes was an independent liability and was not subject to the statutory language which might otherwise have limited the extent of Richard's liability.⁸ In summary, the two circuits came to directly opposite conclusions on cases involving an identical fact pattern.⁹

This Note examines the cases involving the Baptiste brothers and concludes that the logic of both circuit courts was flawed because the courts failed to consider an alternative approach which is both consistent with the law as already applied in a related area and more accurately reflects the equities of the situation.¹⁰ Section I examines the statutory framework surrounding the issue of transferee liability.¹¹ Section II examines the relevant case law and presents a detailed history of the various cases involving the Baptistes.¹² Section III addresses some of the planning implications that arise for the practicing attorney concerning transferee liability as a result of the split in the circuits.¹³ Section III also analyzes the principal arguments of the respective circuit courts and presents an initial conclusion that the logic of the Eleventh Circuit more accurately reflects the apparent intent of Congress than the logic of the Eighth Circuit.¹⁴ Finally, Section IV considers an alternative approach to the issue of transferee liability and concludes that this alternative approach is consistent with the application of the law in at least one related area and more accurately reflects the equities of the situation.¹⁵

⁵ *Baptiste II*, 29 F.3d at 437-38.

⁶ *Id.*

⁷ *Baptiste III*, 29 F.3d at 1541.

⁸ *Id.* at 1541-42.

⁹ Compare *Baptiste III*, 29 F.3d at 1535, with *Baptiste II*, 29 F.3d at 438.

¹⁰ See *infra* notes 188-91 and accompanying text.

¹¹ See *infra* notes 16-48 and accompanying text.

¹² See *infra* notes 49-170 and accompanying text.

¹³ See *infra* notes 171-73 and accompanying text.

¹⁴ See *infra* notes 174-87 and accompanying text.

¹⁵ See *infra* notes 188-91 and accompanying text.

I. STATUTORY FRAMEWORK

Subtitle B of the Internal Revenue Code ("Code") generally governs federal estate taxes.¹⁶ In particular, section 2001 of the Code imposes a tax ("estate tax") on the transfer of the taxable estate of every decedent who was a citizen or resident of the United States at the time of death.¹⁷ Section 2001 also requires the executor or administrator of the decedent's estate to file an estate tax return.¹⁸ Section 2001 further establishes that the payment of an estate tax is due at the time fixed for the filing of the estate tax return.¹⁹ Section 2002 of the Code provides that the executor or administrator of the estate shall pay the estate tax.²⁰

A. *Existence of Transferee Liability*

Subtitle F of the Code generally governs procedural and administrative matters relating to federal income, estate and gift taxes.²¹ Chapter 64 of Subtitle F addresses the collection of these tax liabilities.²² In particular, section 6324(a)(2) provides that if the executor or administrator of an estate does not pay the estate tax when due, the transferee of any property that was included in the decedent's gross estate at the time of the decedent's death will be personally liable for the unpaid tax.²³

Section 6901(a) of the Code prescribes the assessment and collection of this transferee liability if the executor or administrator does not properly pay the estate tax.²⁴ Section 6901(a)(1)(A)(ii) provides that the assessment, collection and payment of a transferee's liability for estate taxes are subject to the same provisions and limitations as the original, underlying estate tax liability.²⁵ Under section 6902(a) of the

¹⁶ See generally I.R.C. §§ 2001-201 (1988).

¹⁷ *Id.* § 2001.

¹⁸ *Id.* Section 6018(1) limits this requirement for filing a return to estates in which the value of the gross estate of a citizen or resident at the time of death was in excess of \$600,000. *Id.* § 6018(1).

¹⁹ *Id.* § 2001. Section 6075(a) further establishes that the due date for the estate tax return is generally no later than nine months after the date of the decedent's death. *Id.* § 6075(a).

²⁰ *Id.* § 2002.

²¹ See generally I.R.C. §§ 6001-7873.

²² See generally *id.* §§ 6300-44.

²³ *Id.* § 6324(a)(2).

²⁴ *Id.* § 6901(a).

²⁵ *Id.* § 6901(a)(1)(A)(ii).

Code, the IRS has the burden of proving that an individual is liable as a transferee of the property of the decedent.²⁶

The purpose of imposing transferee liability is to prevent transferors from escaping estate tax liability by transferring property to another entity.²⁷ Transferee liability applies not only to the initial transferee, but also to any subsequent transferee of the initial transferee.²⁸ The combination of these various Code sections ensures that the IRS can collect the full amount of estate tax due on the estate of any decedent regardless of whether the executor or administrator makes the tax payment.²⁹

B. *Extent of Transferee Liability*

Although section 6324(a)(2) creates transferee liability, it also imposes limits on the extent of that liability.³⁰ Under section 6324(a)(2), a transferee's personal liability is limited to the value of the property that the transferee actually receives.³¹ The value of the property for this purpose is determined as of the date of the decedent's death.³²

Chapter 67 of the Code generally addresses the subject of interest.³³ Section 6601(a) provides that the party responsible for paying the original, underlying tax liability shall also pay interest on any amount of that liability that the party does not pay before the last date that the Code prescribes for payment.³⁴ Section 6601(e)(1) of the Code states that the term "tax" includes any interest that the Code imposes on any unpaid tax liabilities.³⁵

C. *Statutory Interpretation*

The inquiry concerning the interpretation of a statute begins with the language of the statute itself.³⁶ When the meaning of the language is unambiguous, that meaning is generally conclusive in the interpretation of the statute unless the literal application of the statute is

²⁶ I.R.C. § 6902(a).

²⁷ See Brief for Appellee at 21, *Baptiste II* (No. 93-2960).

²⁸ See *id.*

²⁹ I.R.C. § 6901(c)(2).

³⁰ *Id.* § 6342(a)(2).

³¹ *Id.*

³² See *id.*

³³ See generally *id.* §§ 6601-22.

³⁴ I.R.C. § 6601(a).

³⁵ *Id.* § 6601(e)(1).

³⁶ See, e.g., *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985).

demonstrably at odds with the intention of its drafters.³⁷ In such cases, the intention of the drafters controls, rather than the strict language.³⁸

The interpretation of the statutes concerning the determination of the extent of transferee liability for estate taxes depends upon determining the nature of the additional liability for interest that section 6601(a) imposes.³⁹ One possible interpretation is that section 6324(a)(2), taken together with section 6601(e), places a cap on the extent of transferee liability.⁴⁰ Under this interpretation, the original tax liability plus any accumulated interest cannot exceed the value of the property that the transferee actually receives.⁴¹

A second possible interpretation is that the language of section 6324(a)(2) does not explicitly state that the liability of the transferee is a *tax* liability.⁴² Rather, section 6324(a)(2) imposes an obligation on the transferee simply to satisfy the original tax liability of the estate.⁴³ Under this interpretation, the fact that the obligation of the *estate* is a tax liability does not necessarily mean that the obligation of the *transferee* is also a tax liability.⁴⁴ If the transferee's liability is not a tax liability, but a general personal liability, then the accumulated interest on the original liability is not a tax liability either.⁴⁵ Instead, the interest represents a separate, independent liability.⁴⁶ As an independent liability, the interest would not be subject to the limitations on transferee liability that section 6324(a)(2) imposes.⁴⁷ As a result, the total transferee liability including interest could exceed the value of the property that the transferee actually receives.⁴⁸

II. CASE LAW

In 1988, in *Poinier v. Commissioner* ("*Poinier II*"), the United States Court of Appeals for the Third Circuit held that the total amount of a donee's transferee liability in the context of federal gift taxes cannot exceed the total amount of the gift itself.⁴⁹ The Third Circuit based its

³⁷ See, e.g., *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

³⁸ See *id.*

³⁹ See *Baptiste III*, 29 F.3d at 1541.

⁴⁰ See *Baptiste II*, 29 F.3d at 437.

⁴¹ See *id.*

⁴² See *Baptiste III*, 29 F.3d at 1541.

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.* at 1541-42.

⁴⁶ See *id.* at 1542.

⁴⁷ See *Baptiste III*, 29 F.3d at 1542.

⁴⁸ See *id.* at 1542-43.

⁴⁹ 858 F.2d 917, 923 (3d Cir. 1988) [hereinafter *Poinier II*].

holding on a plain language reading of section 6324(b) of the Code, which is the gift tax counterpart to the estate tax provisions of section 6324(a)(2).⁵⁰ Section 6324(b) provides that if the donor does not pay the gift tax when it is due, the donee transferee of the gift shall be personally liable for the gift tax to the extent of the value of the gift.⁵¹

Lois Poinier ("Poinier") and W. Page Wodell ("Wodell") were the children of Helen W. Halbach ("Helen") and the grandchildren of Parker Webster Page ("Parker").⁵² Parker died in January of 1937.⁵³ Under the provisions of a trust created in Parker's will, his wife Nellie ("Nellie") received the income from the trust for her lifetime.⁵⁴ Upon Nellie's death, the remainder interest of the trust passed in equal shares to Helen and to Parker's other daughter, Lois Page Cottrell ("Lois").⁵⁵ Nellie died at age one hundred on April 14, 1970.⁵⁶ Later that month, both Helen and Lois renounced their shares in the remainder interest of the trust in favor of their respective children.⁵⁷ At that time, the value of Helen's remainder interest was in excess of ten million dollars.⁵⁸ Neither Helen nor Lois filed a gift tax return covering the value of their disclaimed remainder interest.⁵⁹

On June 25, 1981, more than eleven years after Helen's renunciation, the IRS sent a notice of gift tax liability to Helen's estate.⁶⁰ The

⁵⁰ *Id.* at 920.

⁵¹ I.R.C. § 6324(b) (1988).

⁵² *See Poinier II*, 858 F.2d at 917-18.

⁵³ *See id.* at 917.

⁵⁴ *See id.* at 917-18.

⁵⁵ *See id.* at 918.

⁵⁶ *See id.*

⁵⁷ *See Poinier II*, 858 F.2d at 918. Helen made her renunciation on April 19, 1970, and Lois made her renunciation on April 30, 1970. *See id.*

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ *See id.* at 918-19. The IRS had previously sent a notice of deficiency to Lois in the amount of over \$4.6 million in the early 1970s, again on the basis of Lois' renunciation not being made on a timely basis. *See id.* at 918. The Tax Court held that because the renunciation was not made within a reasonable time after knowledge of the existence of the transfer, a taxable gift was made. *See id.* The Court of Appeals for the Eighth Circuit reversed, holding that the time to renounce does not begin until the remainder interest is indefeasibly fixed in both quality and quantity. *Cottrell v. Commissioner*, 628 F.2d 1127, 1129 (8th Cir. 1980). The IRS did not petition for certiorari. *See Poinier II*, 858 F.2d at 918. Thus, neither Lois as donor nor her children as transferees ever paid a gift tax on their portion of the transfer. *See id.*

Shortly after the *Cottrell* decision, the Court of Appeals for the Ninth Circuit came to the opposite conclusion in *Jewett v. Commissioner*, effectively agreeing with the Tax Court position in *Cottrell*. *See* 638 F.2d 93, 96 (9th Cir. 1980). The Supreme Court granted certiorari to resolve the conflict and affirmed *Jewett v. Commissioner*, 455 U.S. 305, 319 (1982). About three weeks after the Supreme Court granted certiorari for *Jewett*, the IRS sent the deficiency notice to Helen's estate. *See Poinier II*, 858 F.2d at 918-19. Helen had died on August 5, 1972. *See id.* at 918.

IRS contended that Helen had not renounced her remainder interest in her father's estate within a "reasonable" time period, thus making the renunciation ineffective.⁶¹ The IRS argued that Helen should have made the renunciation within a reasonable time after she knew of the transfer of the remainder interest to her, rather than within a reasonable time from the actual vesting of the interest.⁶² The IRS also sent notices of transferee liability to Helen's children, Poinier and Wodell, who were the ultimate beneficiaries of Helen's interest in Parker's trust.⁶³

Poinier, Wodell and the executor of Helen's estate all filed petitions in the Tax Court seeking a redetermination of the deficiency and the extent of the transferee liabilities.⁶⁴ In *Commissioner v. Poinier* ("Poinier I"), the Tax Court determined that Helen's renunciation was ineffective because she had not made it on a timely basis.⁶⁵ The Tax Court found that Helen's estate owed a gift tax of over \$4.9 million plus interest from April 15, 1971.⁶⁶ The Tax Court also held that because Poinier and Wodell had each received over \$5.2 million from their grandfather's trust as a result of the renunciation, they were liable as transferees to the extent of the deficiency plus interest without limit.⁶⁷ The Tax Court held, however, that Poinier and Wodell were only liable for the interest that had accrued from June 25, 1981, the date that the IRS notified them of their transferee liability.⁶⁸

In *Poinier II*, the Third Circuit affirmed the Tax Court's finding that Helen had made a taxable transfer to Poinier and Wodell.⁶⁹ The Third Circuit reversed, however, the Tax Court's determination that the transferees were liable for interest to the extent that the interest plus the original liability exceeded the value of the gift.⁷⁰ The Third Circuit rejected the IRS's argument that two separate liabilities existed under section 6324(b), one for the unpaid gift tax liability and another for the independent interest liability.⁷¹ The IRS contended that the

⁶¹ See *Poinier II*, 858 F.2d at 918. The current factors that the IRS consider in the determination of a reasonable time for making an effective renunciation are contained in 26 C.F.R. § 25.2511-1(c) (1988).

⁶² See *Poinier II*, 858 F.2d at 918.

⁶³ See *id.* at 918-19.

⁶⁴ See *id.* at 919.

⁶⁵ 90 T.C. 63, 67 (1987) [hereinafter *Poinier I*].

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 858 F.2d at 923.

⁷⁰ *Id.* at 922-23.

⁷¹ *Id.* at 920.

limitation on the extent of a donee's gift tax liability to the value of the gift actually received did not apply to the independent liability for interest.⁷² The Third Circuit stated, however, that this was "not an easy argument to articulate."⁷³ The court noted that unlike the donee liability provision in section 6324(b), the IRS could not point to any specific Code provision establishing an independent liability for the interest.⁷⁴ The Third Circuit emphasized that its rejection of the IRS's position advocating an independent liability was both consistent with the plain language of the Code and was "sensible."⁷⁵

Judge Seitz dissented in part from the court's opinion.⁷⁶ His dissent questioned, however, only the court's determination of the date from which the interest attributable to the donee transferees began to accrue.⁷⁷ Judge Seitz stated that section 6601 mandated the accrual of interest from the date that the Tax Court determines the existence of a tax deficiency.⁷⁸ As such, Judge Seitz concurred with the court's overall finding that section 6324(b) of the Code requires that the extent of the total transferee liability for gift taxes plus interest cannot exceed the value of the gift itself.⁷⁹

On July 12, 1994, in *Baptiste v. Commissioner* ("Baptiste II"), the Eighth Circuit similarly held that section 6324(a)(2) of the Code limits the extent of total transferee liability for estate taxes plus interest to the value of the property received.⁸⁰ The Eighth Circuit followed the Third Circuit's reasoning in *Poinier II* with respect to gift taxes to conclude that a plain language reading of section 6324(a)(2) dictated that the extent of the transferee's liability should be capped at the value of the property received for estate taxes, as well.⁸¹ On August 29, 1994, however, in *Baptiste v. Commissioner* ("Baptiste III"), the United States Court of Appeals for the Eleventh Circuit held that the liability for interest is independent from the transferee liability for estate taxes.⁸² As such, the court concluded that only the transferee's liability for the original underlying estate tax is subject to the cap in section

⁷² See *id.*

⁷³ *Id.*

⁷⁴ *Poinier II*, 858 F.2d at 920.

⁷⁵ *Id.*

⁷⁶ *Id.* at 923 (Seitz, J., dissenting).

⁷⁷ *Id.* (Seitz, J., dissenting).

⁷⁸ *Id.* (Seitz, J., dissenting).

⁷⁹ *Poinier II*, 858 F.2d at 923 (Seitz, J., dissenting).

⁸⁰ 29 F.3d 433, 437 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1251 (1995).

⁸¹ *Id.* at 437-38.

⁸² *Baptiste III*, 29 F.3d 1533, 1542-43 (11th Cir. 1994).

6324(a)(2).⁸³ Thus, the Eleventh Circuit held that a transferee's total liability including interest can exceed the value of the property received.⁸⁴

Gabriel Baptiste, Sr. ("Baptiste") died on September 26, 1981.⁸⁵ At the time, Baptiste was a United States citizen but was living in Venezuela.⁸⁶ Baptiste was survived by his second wife, who was a Venezuelan national.⁸⁷ At the time of Baptiste's death, he owned an insurance policy on his life in the amount of \$150,000.⁸⁸ The beneficiaries of the life insurance policy were Baptiste's three children, Richard Baptiste ("Richard"), Gabriel Baptiste, Jr. ("Gabriel") and Barbara Baptiste ("Barbara").⁸⁹ Each of the beneficiaries received \$50,000 from the life insurance policy shortly after Baptiste's death.⁹⁰

Barbara was the executor for Baptiste's estate.⁹¹ Barbara properly included the value of the life insurance policy in the calculation of her father's taxable estate.⁹² Baptiste's second wife, however, held the remaining assets of his estate in Venezuela.⁹³ The second wife refused to release any assets for the payment of the estate tax liability.⁹⁴ As such, when Barbara filed a federal estate tax return for Baptiste's estate on December 29, 1982, she did not make any estate tax payments.⁹⁵

After examining the return, the IRS determined that there was a deficiency in the estate tax.⁹⁶ On September 18, 1985, the IRS mailed a notice of deficiency to Barbara, as executor.⁹⁷ Barbara then filed a timely petition in the Tax Court contesting the deficiency.⁹⁸ Subsequently, the IRS and Barbara reached an agreement that the estate owed estate taxes of \$62,378.48 to the IRS.⁹⁹ Pursuant to that agreement, the Tax Court entered a stipulated decision on May 13, 1988, that the estate

⁸³ *Id.* at 1542.

⁸⁴ *Id.* at 1542-43.

⁸⁵ *See id.* at 1535.

⁸⁶ *See* Brief for Appellant at 3, *Baptiste II* (No. 93-2960).

⁸⁷ *See id.*

⁸⁸ *See Baptiste III*, 29 F.3d at 1535.

⁸⁹ *See* Brief for Appellee at 1 n.3, *Baptiste II* (No. 93-2960).

⁹⁰ *See Baptiste III*, 29 F.3d at 1535.

⁹¹ *See id.*

⁹² *See id.*

⁹³ *See id.*

⁹⁴ *See id.*

⁹⁵ *See Baptiste III*, 29 F.3d at 1535.

⁹⁶ *See id.*

⁹⁷ *See Baptiste II*, 29 F.3d at 433.

⁹⁸ *See id.*

⁹⁹ *See id.* at 434.

owed an estate tax in the amount of \$62,378.48.¹⁰⁰ The estate, however, again failed to pay the estate tax because Baptiste's second wife continued to refuse to release any of the estate's assets.¹⁰¹

On October 6, 1989, the Commissioner issued a notice of deficiency to Richard and to Gabriel on the basis of their status as transferees.¹⁰² The notice asserted an assessment for unpaid estate taxes in the amount of \$50,000 plus interest as provided by law.¹⁰³ On January 2, 1990, Richard and Gabriel each filed a timely petition in the Tax Court to contest the amount of their respective liabilities.¹⁰⁴ In their petitions, neither Richard nor Gabriel challenged his personal liability as a transferee.¹⁰⁵

At this point, both Richard and Gabriel were acting *pro se*.¹⁰⁶ The IRS filed an answer to Richard's and Gabriel's petitions which set forth an affirmative allegation that Richard and Gabriel were liable for the deficiency in estate tax due as transferees at law.¹⁰⁷ Richard and Gabriel failed to respond to the affirmative allegation of the IRS.¹⁰⁸ On August 20, 1990, the Tax Court thus deemed the allegation to be admitted under the court's procedural rules.¹⁰⁹

The IRS then filed a motion for summary judgment, relying upon the pleadings, the affirmative allegation deemed to be admitted and the earlier stipulated decision of the Tax Court.¹¹⁰ The IRS asserted that the stipulated decision establishing \$62,378.48 as the amount of estate tax was *res judicata* with respect to the amount of the estate tax liability.¹¹¹ Further, the IRS asserted that Richard and Gabriel, as transferees at law under section 6324(a)(2) of the Code, were each liable for \$50,000 plus interest on the unpaid estate tax.¹¹² At this time, Richard and Gabriel retained counsel.¹¹³

¹⁰⁰ *Baptiste v. Commissioner*, No. 44928-85, 1988 U.S. Tax Ct. LEXIS 156, at *1 (May 13, 1988).

¹⁰¹ See Brief for Appellant at 3, *Baptiste II* (No. 93-2960).

¹⁰² See *Baptiste I*, 100 T.C. 252, 253 (1993). Although Barbara was also technically subject to transferee liability as a recipient of assets included in her father's taxable estate, the IRS did not pursue any such claim against her because her financial condition largely precluded any realistic chance of recovery. See Telephone Interview with Paul J. Peter, Attorney (Jan. 17, 1996).

¹⁰³ See *Baptiste I*, 100 T.C. at 253.

¹⁰⁴ See *id.*

¹⁰⁵ See *Baptiste III*, 29 F.3d at 1536; *Baptiste II*, 29 F.3d at 434.

¹⁰⁶ See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 434.

¹⁰⁷ See *Baptiste III*, 29 F.3d at 1536; *Baptiste II*, 29 F.3d at 434-35.

¹⁰⁸ See *Baptiste III*, 29 F.3d at 1536; *Baptiste II*, 29 F.3d at 435.

¹⁰⁹ See *Baptiste III*, 29 F.3d at 1536; *Baptiste II*, 29 F.3d at 435.

¹¹⁰ See *Baptiste III*, 29 F.3d at 1536; *Baptiste II*, 29 F.3d at 435.

¹¹¹ See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 435.

¹¹² See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 435.

¹¹³ See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 435. Gabriel and Richard both

In April 1992, the Tax Court granted partial summary judgment to the IRS.¹¹⁴ The Tax Court determined that its earlier stipulated decision was res judicata as to the existence and amount of the estate tax due.¹¹⁵ The Tax Court then determined that Richard and Gabriel were each personally liable under section 6324(a)(2) of the Code for the unpaid taxes to the extent of the \$50,000 value of each individual's interest in the insurance benefits at the time of the decedent's death.¹¹⁶ The Tax Court reserved judgment as to the extent of Richard's and Gabriel's liability for accrued interest in excess of the amount each had received from the life insurance proceeds.¹¹⁷

On March 29, 1993, in *Baptiste v. Commissioner* ("Baptiste I"), the Tax Court entered an order finding that Richard and Gabriel were each personally liable not only for the underlying \$50,000 obligation, but also for the accrued interest on that obligation from the due date of their father's estate tax return.¹¹⁸ The Tax Court reasoned that the limitation imposed by section 6324(a)(2) applied to a transferee's liability for unpaid estate tax and for interest accrued thereon that the *transferor* owed.¹¹⁹ The court concluded that the limitation did not apply to a transferee's liability for interest accrued on unpaid estate taxes that the *transferee* owed.¹²⁰ The court noted that section 6324(a)(2) imposes a direct, personal and primary obligation on a transferee.¹²¹ The court concluded that this is an independent liability and that the interest on this liability was thus not subject to the section 6324(a)(2) limitation.¹²²

The Tax Court distinguished its holding from the holding in *Poinier II*, which limited the extent of transferee liability in a gift tax context to the value of the property that the donee received.¹²³ The Tax Court stated that the basis for the decision in *Poinier II* was that the Third Circuit found "no explicit statutory authority" for establishing an independent liability.¹²⁴ The Tax Court disagreed, conclud-

retained Paul J. Peter of the firm Bruckner, O'Gara, Keating, Hendry, Davis & Nedved, P.C. (currently Keating, O'Gara, Davis & Nedved, P.C.) in Lincoln, Nebraska. See Telephone Interview with Paul J. Peter, *supra* note 102.

¹¹⁴ See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 435.

¹¹⁵ See *Baptiste III*, 29 F.3d at 1537; *Baptiste II*, 29 F.3d at 435.

¹¹⁶ *Baptiste I*, 100 T.C. at 253.

¹¹⁷ *Id.* at 253-54.

¹¹⁸ *Id.* at 257. Twelve judges of the twenty judge panel joined the opinion. See *id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 255.

¹²¹ *Baptiste I*, 100 T.C. at 255.

¹²² See *id.* at 256-57.

¹²³ *Id.* at 256.

¹²⁴ *Id.*

ing that the combination of section 6601 and section 6324(a)(2) did, in fact, create explicit statutory authority for establishing the independent liability.¹²⁵ The Tax Court noted that the rationale for its position both in *Poinier I* and in the present case was that the transferee had denied the government the use of money owed to the government.¹²⁶ Consequently, section 6601(a) imposed a liability for interest upon the transferee.¹²⁷ The effect of the Tax Court's order was to raise the total obligation for Richard and Gabriel above the value of the property that each had originally received.¹²⁸ In summary, the Tax Court held that Richard and Gabriel were liable as transferees for the full amount of the unpaid liability, including accrued interest from the due date of their father's estate tax return.¹²⁹

Judge Ruwe concurred in the overall opinion of the Tax Court.¹³⁰ His concurrence stated that the Tax Court based its holding with respect to the existence of an independent liability on a literal application of section 6601 and that the holding was identical to the traditional approach to transferee liability under state law.¹³¹ The judge stated that limiting the liability of the Baptistes here to \$50,000—the value of the property received—would radically change the traditional concept of transferee liability.¹³² The judge concluded that there was nothing to indicate that Congress intended section 6324(a)(2) to create any such radical change.¹³³

Judge Ruwe further stated that a contrary holding would reward those who delay in paying their obligations.¹³⁴ The judge noted that if there was a cap on Richard's and Gabriel's total liability, the longer they delayed in paying that liability, the more money they could make from their use and enjoyment of the original \$50,000.¹³⁵ In summary, Judge Ruwe concluded that Richard and Gabriel were liable for the full amount of the unpaid liability because a contrary holding would represent an unwarranted radical departure from the traditional ap-

¹²⁵ *Id.*

¹²⁶ *Baptiste I*, 100 T.C. at 257.

¹²⁷ *See id.*

¹²⁸ *See id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 258 (Ruwe, J., concurring). Six judges of the twenty judge panel joined in this concurring opinion. *See id.* at 260. Each of the judges that joined this concurrence also joined the opinion of the court. *See id.* at 257.

¹³¹ *Baptiste I*, 100 T.C. at 258 (Ruwe, J., concurring).

¹³² *Id.* at 259 (Ruwe, J., concurring).

¹³³ *Id.* (Ruwe, J., concurring).

¹³⁴ *Id.* (Ruwe, J., concurring).

¹³⁵ *See id.* (Ruwe, J., concurring).

proach to transferee liability and would reward those who delay in paying their obligations.¹³⁶

Judge Halpern also concurred in the overall opinion of the Tax Court, but disagreed with the rationale behind the opinion.¹³⁷ Judge Halpern first noted that nothing in section 6324(a)(2) explicitly provides that the transferee liability is a tax liability.¹³⁸ The judge then reasoned that, on the contrary, if the transferee liability were a tax liability, section 6901—which provides that transferee liability should be treated *in the same manner* as the underlying tax liability—would be redundant.¹³⁹ The judge concluded accordingly that the liability created under section 6324(a)(2) is, in fact, not a tax liability, but some other form of personal liability.¹⁴⁰ Judge Halpern further concluded that because section 6901 subjects transferee liability to the same provisions as the underlying tax liability, the IRS may use section 6601 to assess interest on liabilities arising under section 6901.¹⁴¹ The judge finally stated that section 6324(a)(2) plays no role in the determination of interest on the liability, other than providing the predicate for an individual's status as a transferee under section 6901.¹⁴² In summary, Judge Halpern concluded that Richard and Gabriel were liable for the full amount of the unpaid liability because the interest portion of their liability was not a tax liability and was thus not subject to the limits on transferee liability contained in section 6324(a)(2).¹⁴³

Judge Colvin dissented from the Tax Court's opinion.¹⁴⁴ His dissent focused on a plain language interpretation of section 6324(a)(2) and concluded that the liability of a transferee should be capped at the value of the property received.¹⁴⁵ The judge cited *Poinier II* approvingly and stated that it was not patently unreasonable for Congress to limit the total liability of transferees to the value of the property received because the instances in which such a question would be likely to arise would be comparatively rare.¹⁴⁶ In summary, Judge Colvin

¹³⁶ *Baptiste I*, 100 T.C. at 260 (Ruwe, J., concurring).

¹³⁷ *Id.* (Halpern, J., concurring). One other judge of the twenty judge panel joined in this concurrence. See *id.* at 267. Neither of these judges joined in the opinion of the court. See *id.* at 257.

¹³⁸ *Id.* at 262 (Halpern, J., concurring).

¹³⁹ *Id.* at 263 n.3 (Halpern, J., concurring).

¹⁴⁰ *Id.* at 262 (Halpern, J., concurring).

¹⁴¹ *Baptiste I*, 100 T.C. at 264 (Halpern, J., concurring).

¹⁴² *Id.* at 267 (Halpern, J., concurring).

¹⁴³ *Id.* (Halpern, J., concurring).

¹⁴⁴ *Id.* (Colvin, J., dissenting). Five other judges of the twenty judge panel joined in this dissent. See *id.* at 271 (Colvin, J., dissenting).

¹⁴⁵ *Id.* at 268–69 (Colvin, J., dissenting).

¹⁴⁶ *Baptiste I*, 100 T.C. at 270 (Colvin, J., dissenting).

concluded that Richard's liability and Gabriel's liability should not exceed \$50,000, because that was the value of the property that each received.¹⁴⁷

As a resident of Nebraska, Gabriel appealed to the Eighth Circuit.¹⁴⁸ His appeal challenged the Tax Court's determination that his status as a transferee was *res judicata*.¹⁴⁹ In addition, he contended that even if he was liable as a transferee for unpaid estate taxes, the amount of his liability was limited to the actual value of the interest transferred, namely \$50,000.¹⁵⁰ As a resident of Florida, Richard appealed to the Eleventh Circuit.¹⁵¹ Richard's appeal similarly challenged the Tax Court's determination that his status as a transferee was *res judicata*.¹⁵² Richard also contended that even if he was liable as a transferee, the amount of his liability was limited to \$50,000.¹⁵³

On July 12, 1994, the Eighth Circuit affirmed the Tax Court's holding with respect to the issue of *res judicata*.¹⁵⁴ The Eighth Circuit reversed, however, the Tax Court's holding with respect to the extent of Gabriel's liability.¹⁵⁵ Relying on a plain language interpretation of section 6324(a)(2) and citing *Poinier II* approvingly, the Eighth Circuit limited Gabriel's liability as a transferee to the actual value of the interest transferred.¹⁵⁶ The court stated that the IRS position of advocating an independent liability was an "artificial construction" of the Code.¹⁵⁷ The court further stated that the IRS position "ignores the fact that section 6324(a)(2) juxtaposes a transferee's personal liability with the limitation on [that] liability."¹⁵⁸ The court noted additionally that the IRS position also "ignores the critical interplay between section 6324(a)(2) and section 6601(e)(1)" which accords the same provisions and limitations to transferee liability as to the original, underlying liability.¹⁵⁹ In summary, the Eighth Circuit held that Gabriel's personal liability was limited to the \$50,000 amount that he had actually re-

¹⁴⁷ See *id.* (Colvin, J., dissenting).

¹⁴⁸ See *Baptiste II*, 29 F.3d at 435.

¹⁴⁹ See *id.* at 435-37.

¹⁵⁰ See *id.* at 437.

¹⁵¹ See *Baptiste III*, 29 F.3d at 1537.

¹⁵² See *id.* at 1535.

¹⁵³ See *id.*

¹⁵⁴ *Baptiste II*, 29 F.3d at 437.

¹⁵⁵ *Id.* at 438.

¹⁵⁶ *Id.* at 437-38.

¹⁵⁷ *Id.* at 438.

¹⁵⁸ *Id.*

¹⁵⁹ *Baptiste II*, 29 F.3d at 438.

ceived.¹⁶⁰ The IRS petitioned the Supreme Court for certiorari.¹⁶¹ The Supreme Court denied certiorari on February 27, 1995.¹⁶²

On August 29, 1994, however, the Eleventh Circuit affirmed the Tax Court decision with respect to Richard in its entirety.¹⁶³ On the issue of the extent of the transferee liability, the Eleventh Circuit closely followed the reasoning in Judge Halpern's concurrence to conclude that Richard's liability under section 6324(a)(2) was "not a tax liability, but an independent personal obligation."¹⁶⁴ The court further concluded that section 6901(a) "authorizes the government to impose interest on the obligation of the transferee under section 6601 as if it were a tax liability."¹⁶⁵ The court noted that its conclusion was "further bolstered by common sense, as it was unlikely that Congress would alter the traditional rule that one who possesses funds of the government must pay interest for the period that person enjoys the benefit of same."¹⁶⁶ The Eleventh Circuit finally concluded that the limitations in section 6324(a)(2) applied only to the original, underlying tax obligation.¹⁶⁷ In summary, the Eleventh Circuit held that Richard was liable for interest on his underlying obligation without limit from the due date of the estate tax return for his father's estate.¹⁶⁸ Richard did not appeal the decision of the Eleventh Circuit, primarily because of personal financial reasons.¹⁶⁹ As a result, the circuit courts were left with exact opposite conclusions from an identical fact pattern.¹⁷⁰

III. UNRESOLVED CONFLICT BETWEEN THE CIRCUITS

By the happenstance of the Baptiste brothers living in two different federal circuits, there is now a direct and unresolved conflict between the circuits with respect to the extent of transferee liability.¹⁷¹ Two significant issues arise here. First, what are the implications of this conflict for the practicing attorney? Second, which of the two positions should prevail if the issue of transferee liability arises in yet another

¹⁶⁰ *Id.*

¹⁶¹ See *Commissioner v. Baptiste*, 115 S. Ct. 1251, 1261 (1995).

¹⁶² *Id.*

¹⁶³ *Baptiste III*, 29 F.3d at 1535.

¹⁶⁴ *Id.* at 1542.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Baptiste III*, 29 F.3d at 1542.

¹⁶⁹ See Telephone Interview with Paul J. Peter, *supra* note 102.

¹⁷⁰ Compare *Baptiste III*, 29 F.3d at 1535, with *Baptiste II*, 29 F.3d at 438.

¹⁷¹ Compare *Baptiste III*, 29 F.3d 1533, 1535 (11th Cir. 1994), with *Baptiste II*, 29 F.3d 433, 438 (8th Cir. 1994).

circuit? This section of the Note suggests that the planning implications are broader than they might initially appear. This discussion arrives at an initial conclusion that the logic of the Eleventh Circuit more accurately reflects the apparent intent of Congress than the logic of the Eighth Circuit.

A. *Planning Implications*

The lack of case law in the area of transferee liability, though frustrating to the attorney, is not indicative of the lack of importance of the overall issue of transferee liability. This lack of case law may simply be more of a reflection that in the instances in which transferee liability arises, the amounts involved do not warrant pursuing the issue all the way through the court system and the parties usually settle instead. For example, Richard Baptiste did not pursue the full range of his legal options because of financial limitations.¹⁷² In cases involving smaller sums, the issue may not come to trial at all.

Nonetheless, the attorney should not underestimate the potential extent of a client's transferee liability. Transferee liability will only arise in situations in which the transferor has not paid the original tax liability. As such, by the time that the transferee is even aware of his or her liability, the tax obligation may already be long overdue. As with any overdue tax liability, the interest and penalties may far exceed the amount of the original liability, with or without a cap on that liability. Another concern is that the transferee may have long since dissipated the transferred property and, therefore, may only be able to satisfy the transferee liability from other personal assets—if at all.

The practicing attorney faces two significant problems in this area. First, transferee liability is not limited to estate taxes. The Code applies transferee liability to income taxes and gift taxes.¹⁷³ As such, the issue is far broader than it might initially appear.

Second, transferee liability is a difficult issue to spot in advance and consequently is a difficult area in which to prepare an effective planning strategy. Even if the Baptiste brothers had been represented by counsel from the beginning of their ordeal, it is not at all apparent that anyone could have foreseen the actions of their stepmother. Further, the law in this area is not well settled. At this point, it appears that the attorney could reasonably advise a client that transferee liabil-

¹⁷² See Telephone Interview with Paul J. Peter, *supra* note 102.

¹⁷³ See generally I.R.C. § 6321 (1988) (discussing income taxes); *id.* § 6324(b) (discussing gift taxes).

ity will be limited to the value of the property that the client received if the client lives in the Third or the Eighth Circuits. If the client lives in the Eleventh Circuit, the extent of the transferee liability appears to be essentially unlimited. For a client who lives in any of the other circuits, the likely outcome of a transferee liability case is unpredictable. Precedent in the Tax Court, however, indicates that a client living in *any* part of the country may have to be willing to carry the battle all the way to the circuit court to prevail on the issue of capping the extent of transferee liability to the value of the property received.

B. *The Two Approaches*

The principal issue discussed above concerning the extent of transferee liability is essentially straightforward: is the interest that has accrued on the unpaid liability simply another form of a tax or is the interest some other form of liability? If the interest is the former, then the statutory language of section 6324(a)(2) and section 6601(e)(1) controls.¹⁷⁴ The result is that the "plain language" approach of the courts in *Poinier II* and *Baptiste II* is correct and transferee liability is capped at the value of the property received.¹⁷⁵ But if the interest is another form of personal liability that simply looks like a tax, then the statutory language of section 6901(a)(1) controls and the interest represents an independent liability.¹⁷⁶ Under this "independent liability" approach, the court in *Baptiste III* is correct and the extent of the transferee liability is unlimited.¹⁷⁷

It is tempting to surrender to the simplicity of the plain language approach of the courts in *Poinier II* and *Baptiste II*.¹⁷⁸ If transferee liability can be resolved as a matter of plain language, then the inquiry is over; there is no need to look any further, for example, at the intent of the drafters.¹⁷⁹ The courts in *Poinier II* and *Baptiste II* further bolster their argument by claiming that there is no explicit statutory provision supporting the existence of an independent liability.¹⁸⁰ Judge Halpern of the Tax Court, however, effectively shatters the simplicity of the plain language approach.¹⁸¹ Judge Halpern's construction of different provisions of the Code casts doubt as to just how "plain" the meaning of

¹⁷⁴ See *Baptiste II*, 29 F.3d at 437.

¹⁷⁵ See *id.*; *Poinier II*, 858 F.2d 917, 920 (3d Cir. 1988).

¹⁷⁶ See *Baptiste III*, 29 F.3d at 1541.

¹⁷⁷ See *id.* at 1541-42.

¹⁷⁸ See *Baptiste II*, 29 F.3d at 437; *Poinier II*, 858 F.2d at 920.

¹⁷⁹ See, e.g., *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

¹⁸⁰ See *Baptiste II*, 29 F.3d at 437; *Poinier II*, 858 F.2d at 920.

¹⁸¹ See generally *Baptiste I*, 100 T.C. at 260-67 (Halpern, J., concurring).

the statutes really is and rebuts the concern over the lack of explicit statutory provisions supporting the existence of the independent liability.¹⁸² Judge Ruwe further weakens the plain language approach.¹⁸³ As both Judge Ruwe and the Eleventh Circuit conclude, the inevitable result of adopting the plain language approach is illogical.¹⁸⁴ With liability capped, the taxpayer has no incentive to actually pay the transferee liability; the longer the taxpayer holds onto the money, the more interest the taxpayer will earn at the expense of the government.¹⁸⁵ Further, if a plain language approach is no longer appropriate for statutory interpretation, then it becomes important to look to the intent of the drafters.¹⁸⁶ As Judge Ruwe notes, this would be a radical break from the traditional concept, and there is nothing in the legislative history indicating that Congress intended such a break.¹⁸⁷ As such, the logic of the independent liability approach appears on the surface to be more compelling with respect to the determination of the proper characterization of the interest liability.

IV. CONCLUSION

Another issue arises here concerning the extent of transferee liability, which the Tax Court and the various circuit courts have apparently ignored entirely. In particular, should transferee liability exist at all in cases such as this, where the transferee appears to be innocent of all wrongdoing? The purpose of transferee liability is to prevent transferors from escaping tax liability by transferring property to another entity.¹⁸⁸ To the extent that the transferor intended the transfer as a means of tax avoidance, transferee liability accomplishes its stated purpose. But there is no evidence from the *Baptiste* cases that Mr. Baptiste purchased the life insurance policy for the purpose of avoiding estate taxes. Instead, it seems far more likely that Mr. Baptiste was motivated primarily by a desire to provide a financial legacy for his children. If anything, Mr. Baptiste's purchase of the life insurance policy compounded the issue of his estate's total estate tax liability; the life insurance proceeds increased the size of his taxable estate and thus increased the size of his estate tax liability.¹⁸⁹ The application of trans-

¹⁸² See *id.* (Halpern, J., concurring).

¹⁸³ See generally *id.* at 258-60 (Ruwe, J., concurring).

¹⁸⁴ See *id.* at 259.

¹⁸⁵ See *id.*

¹⁸⁶ See, e.g., *Griffin*, 458 U.S. at 571.

¹⁸⁷ See *Baptiste I*, 100 T.C. at 259.

¹⁸⁸ See Brief for Appellee at 21, *Baptiste II* (No. 93-2960).

¹⁸⁹ See I.R.C. § 2042(2) (1988).

feree liability in the *Baptiste* cases harmed only the innocent parties and was thus inappropriate.

There is then a third approach for dealing with transferee liability. In the absence of the apparent primary intent of the transferor to avoid taxes, transferee liability should be ignored altogether with respect to innocent transferees. This approach is not without precedent. Section 6013 of the Code relieves an innocent spouse from liability for a substantial understatement of income by the other spouse on a joint income tax return when the innocent spouse establishes that he or she "did not know of, and had no reason to know of" the actions of the other spouse which gave rise to the liability.¹⁹⁰ The approach suggested here would simply extend this idea to another area of transferee liability and to a broader class of innocent transferees.

An "innocent party" approach to transferee liability would have more accurately reflected the equities of the *Baptiste* cases. There is no evidence that the *Baptiste* brothers were anything other than innocent transferees. There is similarly no evidence that the brothers knew or had any reason to know that their stepmother would refuse to release funds to pay the estate tax liability. Yet under either of the approaches that the courts considered, the brothers lost their full inheritance from their father. The only issue before the courts was whether they would lose even more.

The courts involved in the various *Baptiste* cases erred by not at least considering this innocent party approach to the issue of transferee liability. The courts may argue in response that because the issue was not raised by any of the parties, the matter was not properly before the courts. Such an argument is largely self-serving. The courts may have been constrained not to have *decided* the *Baptiste* cases on the basis of an argument not offered by either party. But the courts could at least have explored the argument on their own, if for no other reason than to signal their willingness to entertain this approach from the next innocent transferee. Nor are judicially imposed limitations on transferee liability without precedent.¹⁹¹

¹⁹⁰ *Id.* § 6013. Exceptions for innocent transferees are not confined to the IRS Code. For example, the Bankruptcy Code protects good faith transferees for value from the avoidance powers of the bankruptcy trustee by preserving the interest transferred to the transferee. See generally 11 U.S.C. §§ 547, 548(c) (1988). Similarly, the Uniform Commercial Code allows good faith purchasers in the ordinary course of business to take free of any security interests pertaining to the seller, even if the purchaser knows of the security interest. See generally U.C.C. § 9-307 (1972). Even Judge Halpern recognizes the need for some limits to transferee liability, as absolute unlimited liability would lead to "a patently unfair and irrational result." See *Baptiste I*, 100 T.C. 252, 261 (1993).

¹⁹¹ See, e.g., *Schuster v. Commissioner*, 312 F.2d 311, 318 (9th Cir. 1962).

For now, the status of the law remains unsettled in most circuits, even without consideration of an innocent party approach that this Note advocates. A prudent strategy for the attorney who becomes aware that his or her client has received a substantial gift is to advise the client to look at all such gift horses carefully, lest they turn out to be made in Troy.

STUART J. HAMILTON