

Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax Under IRC § 7403

TAXPAYER RIGHTS IMPACTED¹

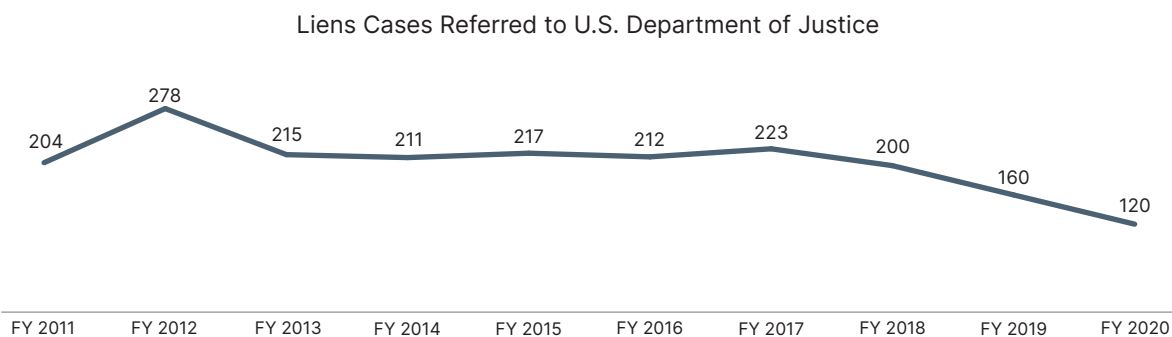
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

OVERVIEW

IRC § 7403 authorizes the Department of Justice (DOJ) to bring a civil action to enforce a federal tax lien and to foreclose on taxpayer property, including a personal residence, to satisfy an outstanding tax liability. If the United States proves the lien is valid, the court will typically issue an order of sale that (1) authorizes the United States to foreclose on the taxpayer’s subject property and (2) describes how the proceeds of sale should be distributed. In *Rodgers*, the Supreme Court held that courts have essentially no discretion to refuse to authorize a sale simply to protect the interest of the delinquent taxpayer.²

In fiscal year (FY) 2020, 120 federal tax lien cases were referred to the DOJ, down 25 percent from FY 2019. This continues a downward trend in referrals to the DOJ over the past four years.

FIGURE 2.2.1



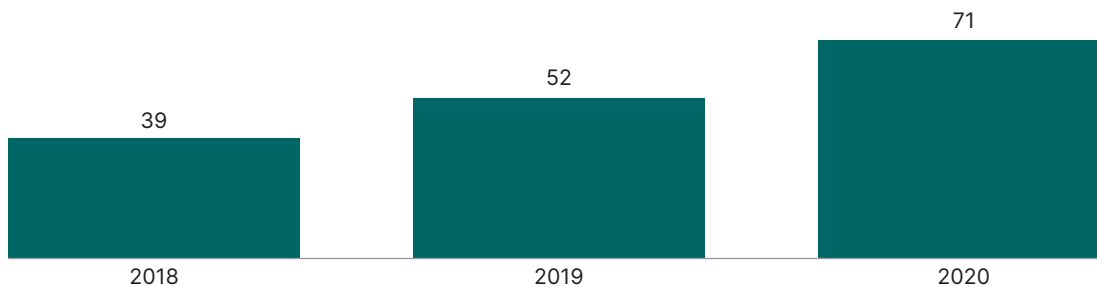
Oddly enough, the decreasing number of referrals to the DOJ have not correlated to the number of lien enforcement cases actually litigated in federal courts. During the reporting period from June 1, 2019, to May 31, 2020, we identified 71 opinions that involved civil actions to enforce liens under IRC § 7403. This represents a 37 percent increase from the 52 cases reported last year, and an 82 percent increase from the

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).
 2 *United States v. Rodgers*, 461 U.S. 677 (1983).

39 cases reported in the period ending May 2018. Perhaps we will see a decline in litigated cases in upcoming years, as there may be a lag due to the time it takes the DOJ to develop its lien enforcement cases. The higher percentage of lien enforcement cases referred to the DOJ that are actually litigated could also be an indication that the IRS is being more selective about referring cases to the DOJ for prosecution.

FIGURE 2.2.2

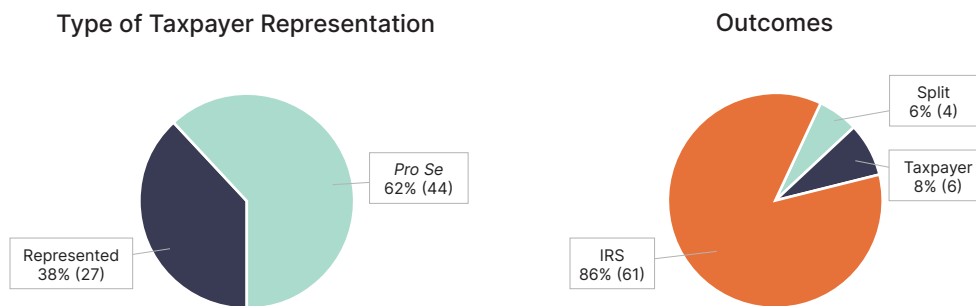
Lien Enforcement Cases Litigated, 2018-2020



ANALYSIS OF LITIGATED CASES

Of the 71 lien enforcement cases adjudicated during the reporting period ending in May 2020, 44 (62 percent) taxpayers were unrepresented (*pro se*), while 27 (38 percent) were represented by counsel. Taxpayers prevailed in just six of the 71 lien enforcement cases. The IRS prevailed in 61 of these cases, with four cases resulting in split decisions where the IRS and taxpayers each prevailed in part.

FIGURE 2.2.3³



³ TAS identified seven lien enforcement cases where the taxpayer was unresponsive and there was no attorney of record as of the date of the court's opinion. Therefore, we categorized these cases as *pro se*. See *United States v. Harding*, 125 A.F.T.R.2d 1265 (E.D. Cal. 2020); *United States v. Bonadio*, 125 A.F.T.R.2d 2142 (N.D.N.Y. 2020); *United States v. Patchell*, 125 A.F.T.R.2d 642 (E.D.N.Y. 2020); *United States v. Anderson*, 2019 U.S. Dist. LEXIS 186951 (W.D. Wis. Sept. 24, 2019); *United States v. Clark*, 2019 U.S. Dist. LEXIS 127841 (D.S.C. July 9, 2019); *United States v. John*, 2020 U.S. Dist. LEXIS 30373 (E.D.N.Y. Feb. 20, 2020); *United States v. John*, 2020 U.S. Dist. LEXIS 36708 (E.D.N.Y. Mar. 2, 2020).

Ordering the sale of a taxpayer's property is a powerful collection tool and greatly impacts all parties who have an interest in the property subject to the lien. This is particularly true when the lien involves a taxpayer's personal residence. Among the 71 litigated cases this year, 32 involved the enforcement of a lien against a taxpayer's personal residence.

Lien enforcement litigation typically focuses on applying well-settled legal principles. For example, it may involve the application of the *Rodgers*⁴ factors to determine whether there should be a forced sale when the property involves a third party without a federal tax debt. While such analysis may be fact-intensive, very few lien enforcement cases break new ground or add to the legal landscape under IRC § 7403 — and such was the case this year.

CONCLUSION

Lien enforcement cases are becoming an increasingly frequent source of litigation and often infringe on the rights of taxpayers and third parties. The National Taxpayer Advocate is concerned with the following aspects of the lien enforcement process:

First, seizure of a taxpayer's principal residence may have a devastating impact on the taxpayer and his or her family, especially if the taxpayer is at risk of economic hardship. Foreclosing on a home when a taxpayer is experiencing economic hardship runs contrary to a taxpayer's *right to a fair and just tax system*.⁵ Congress intended that foreclosure of a principal residence should be the last resort.⁶

Second, Collection Due Process (CDP) notice and hearing procedures described in IRC §§ 6320 and 6330 are not extended to third parties who have an interest in property subject to an IRC § 7403 lien enforcement. This deprives these affected third parties of the *right to challenge the IRS's position and be heard* prior to a lien enforcement suit. Allowing affected third parties to raise defenses and propose collection alternatives in a CDP hearing could help reduce litigation by resolving these issues earlier.⁷

The National Taxpayer Advocate had included recommendations to address both of these concerns in her Purple Book.⁸ At the recommendation of the Office of the Taxpayer Advocate, the IRS has written procedures into its Internal Revenue Manual (IRM) that provide substantial taxpayer protections before a case may be

4 *United States v. Rodgers*, 461 U.S. 677 (1983).

5 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 46-47 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence)*.

6 The Senate Finance Committee report stated that the seizure of the taxpayer's principal residence "should only be seized to satisfy a tax liability as a last resort." S. REP. NO. 105-174, at 86-87 (1998).

7 National Taxpayer Advocate 2021 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 47-48 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence)*.

8 The National Taxpayer Advocate has submitted these recommendation in her 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 46-47 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence)* and the 2021 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 47-48 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence)*.

referred to the DOJ for the filing of a lien foreclosure suit.⁹ However, the IRM is simply a set of instructions to IRS staff, without the force of law, and may be modified or rescinded by the IRS at any time.

Recommendations to Mitigate Disputes

The National Taxpayer Advocate recommends that:

1. Congress amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, unless the employee has determined that (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer.
2. Congress amend IRC §§ 6320 and 6330 to extend CDP rights to "affected third parties" who hold legal title to property subject to IRS collection actions.

9 See, e.g., IRM 5.17.4.8.2.5, Lien Foreclosure on a Principal Residence (May 23, 2019); IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence (May 24, 2019); IRM 25.3.2.4.5.2(3), Actions Involving the Principal Residence of the Taxpayer (May 29, 2019).