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To:

Cc:

Subject: RE: IRC 6901 Transferee Statute of Limitations - Fraud on transferor

Hi again, . Here is the follow-up on the prelim answer from yesterday.

I think the cases you cited don't get you clearly, 100% where you need to be. In addition to what section 6901(c) provides on its face, you may want to take a look at Commissioner v. Gerard, 78 F.2d 485 (9th Cir. 1935) (the expiration of the statutory period during which an assessment might have been made against the trans/or is dispositive, not the date that an assessment was actually made against the trans/or); Field v. Commissioner, 32 T.C. 187 (Tax Ct 1959) ("The rule is well established that the 1-year period of assessment against a transferee is not measured from the date at which assessment may have been made against the transferor, but is computed from the date of the expiration of the period of limitation on assessment against the transferor."), aff'd, 286 F.2d 960 (6th Cir. 1960), cert den'd, 366 U.S. 949 (1961); Davis v. Commissioner, T.C. Memo. 1964-244 (Tax Ct 1964) ("In our view the one-year period of assessment against a transferee is not measured from the date at which assessment actually has been made against the transferor but is computed from the date on which assessment [m]ight be made against the transferor, which in the case of a taxpayer who files a fraudulent return is at 'any time' under section 276(a) [predecessor to section 6501], *supra*. In this connection, we note that section 311(b)(1) [predecessor of section 6901], *supra*, sets the period of limitations within one year after the expiration of the period 'for assessment' against the transferor, which in the case of a fraudulent taxpayer would mean at 'any time' within the intentment of section 276(a). Moreover, the statutory period 'for assessment' or the time limit in which respondent may make his assessment is not shortened because he has made an assessment against the transferor at an earlier date. [Citations omitted]"); Morley v. Commissioner, T.C. Memo. 1963-330 (Tax Ct 1963) (Since there was no period of limitation for assessment against the taxpayer-transferor [false/fraudulent return], the one-year period provided by section 311(b) of the Internal Revenue Code of 1939 (section 6901(c) of the Internal Revenue Code of 1954) for assessment of transferee liability is inapplicable and there is no period of limitation for assessment of transferee liability or the liability of the transferee of a transferee herein. ... It should also be pointed out, in view of the assessment made by respondent against the transferor on September 21, 1953, that the period of limitation for assessment of transferor liability was not terminated by such assessment and the one-year period for assessment of transferee liability did not begin to run from that date.)

Davis and Morley factually are closest to your situation.

If you have a case where section 6501(c)(1) applies--there is no period of limitations for assessment against the tp-trans/or, the one year period in section 6901(c) is not triggered. That is true even where the Service has, in fact, made an assessment against the tp-trans/or because section 6901(c) turns on the expiration of the period of limitations for assessment against the tp-trans/or. Of course, there is the flush language, but you have not indicated that's at all implicated.

On your other question, there might be someone who is particularly up on alter ego and/or intermediary issues, I'll see what I can dig up.