



## LEGAL UPDATES

# Tapping Their Toes to a Longer Tune: Trustees are Stepping into the Shoes of the IRS to Recover Fraudulent Transfers Up to Ten Years After They Were Made

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Can a bankruptcy trustee recover a fraudulent transfer made six, eight, *ten* years ago? Bankruptcy courts around the country are answering that question with a resounding “yes”, so long as the IRS holds an unsecured claim against the debtor. If more courts arrive at this conclusion, creditors face the risk that trustees will step into the shoes of the IRS to borrow its ten-year statute of limitations for the recovery of fraudulent transfers.

Under Bankruptcy Code 544(b), a trustee may recover fraudulent transfers of a debtor’s property which are recoverable by an unsecured creditor of the debtor under any “applicable law”. While bankruptcy law provides a two-year reach-back period for the recovery of fraudulent transfers, many trustees also sue to recover such transfers under state laws such as the Uniform Voidable Transactions Act or UVTA (formerly the Uniform Fraudulent Transfer Act) because these laws may extend the reach-back period to four or more years.

A Florida bankruptcy trustee recently sued a debtor’s creditors under the UVTA to recover fraudulent transfers, arguing that because the IRS held a claim against the debtor and could recover transfers made *up to ten years before* under applicable nonbankruptcy law, the trustee could recover such transfers in bankruptcy notwithstanding the UVTA’s four-year reach-back period. Thereafter, an Idaho bankruptcy trustee advanced an almost identical argument on similar facts.

The Florida and Idaho bankruptcy courts both agreed with the trustees, holding that since the IRS—an unsecured creditor in both cases—could recover fraudulent transfers for up to ten years, then the trustee was entitled to borrow from the IRS’ “applicable law” and also seek to recover fraudulent transfers made up to ten years before.

How will these decisions impact creditors? Many bankrupt debtors also owe money to the IRS, making the IRS an actual unsecured creditor in their bankruptcy cases. Consequently, these decisions may completely “change the tune” of fraudulent transfer litigation, as we expect more trustees to seek to apply the IRS’ ten-year statute of limitations to recover older fraudulent transfers for the benefit of the debtors’ bankruptcy estates. Our experienced creditors’ rights team is ready

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to help if you find yourself in the cross-hairs of a trustee plaintiff who is whistling a different—and longer—fraudulent transfer tune.