Federal Tax Liens and State Homestead Exemptions: The Aftermath of *United States v. Rodgers*

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COMMENT

Federal Tax Liens and State Homestead Exemptions: The Aftermath of United States v. Rodgers

Introduction

The definition of property interests has traditionally been considered the responsibility of individual states. Courts have held that legal property interests are to be "created" by each state. Similarly, it has been considered within the power of the federal government to define the rules of operation for the federal taxation system.

Given that the system of federal taxation provides for taxation of property and its attachment or seizure for failure to pay taxes, the states—in their property-defining capacity—necessarily have a role to play in the tax-enforcement system. This mutual involvement is sequential: state law initially defines the property interests; federal law then determines the federal tax consequences of those interests. Substantial difficulties arise, however,

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1. See Clarke v. Clarke, 178 U.S. 186 (1900); De Vaugh v. Hutchinson, 165 U.S. 566, 570 (1897) ("[i]t is a principle firmly established that to the law of the State in which the land is situated we must look for the rules which govern its descent, alienation and transfer. . . ." (citing United States v. Crosby, 11 U.S. (7 Cranch) 115 (1812)); Clark v. Graham, 19 U.S. (6 Wheat.) 577 (1821); McGoon v. Scales, 76 U.S. (9 Wall.) 25 (1869); Brine v. Insurance Co., 96 U.S. (6 Otto.) 627 (1877)). See also 15A C.J.S. Conflict of Laws §§ 17 (character of property determined according to law of place where located—"lex loci rei sitae"); 19(3) (the validity of a deed of realty is tested by law of place wherein land is located) (1967).


5. Aquilino, 363 U.S. at 513; Bess, 357 U.S. at 56-57.
when the state property interests are defined so that federal tax enforcement is hindered.

This Comment will closely examine one such definitional conflict: the clash of state-defined homestead exemptions and the foreclosure element of federal tax lien enforcement. Analysis will center around the recent Supreme Court case of United States v. Rodgers. In Rodgers, the Court dealt head on with the power of the state of Texas to exempt certain homestead property from tax lien foreclosure sale, where one of the co-owners of the homestead was not indebted. Although state homestead exemptions cannot operate directly to preclude foreclosure sale of the delinquent taxpayer's interest, separate and difficult questions are

6. The enforcement provision of the federal tax lien law is found at section 7403, which provides:

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 or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.


9. Rodgers, 461 U.S. at 680. In the companion case of Ingram, the husband was individually indebted for approximately $9000, and the wife (and co-owner) was jointly indebted for $283.33 in federal taxes. Id. at 688.

10. See W. PLUMB, FEDERAL TAX LIENS 20 (3d ed. 1972). One writer has commented on the different treatments accorded exemptions and property rights: "[I]t may be generally stated that a state decision or statute creating an exemption will not be followed by the Commissioner, while state laws protecting property rights will be observed" (citing as example Burnet v. Harmel, 287 U.S. 103 (1932)). 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 (1971) (emphasis in original).

The respondents (Rodgers) in their brief opposing writ of certiorari, stressed the fact that the Texas homestead exemption is a firmly established property right. In their summary of argument, the respondents stated:

- Since Respondent's homestead interest is a separate vested life estate, not merely an exemption from creditors, her deceased taxpayer husband's tax liability may not be enforced against her homestead interest. The correct test in a majority of decisions is whether state law characterizes the homestead as an exemption from creditors or an estate in land. United States v. Heffron, 158 F.2d 657 (9th Cir.), cert. denied, 331 U.S. 831 (1947); United States v. Hershberger, 475 F.2d 677 (10th Cir. 1973); Weitner v. United States, 309 F.2d 45 (5th Cir. 1962), cert. denied, 372 U.S. 913 (1963). This distinction of state law . . . is the proper decisional test because, if state law views the homestead as an estate in land, then property rights vest in a third person not liable for the tax.
raised where the government seeks to force sale of the entire premises in which the delinquent holds only a partial interest.

This Comment will present analysis in three sections. Section One will portray the background against which the Rodgers case was presented to the Supreme Court. Section Two is devoted to critical analysis and evaluation of the Rodgers decision. Finally, Section Three will discuss the practical impact of the decision. Specific attention will be given to: (a) remaining state law involvement in the tax enforcement system, (b) remaining homestead exemption protections, (c) the adequacy of compensation of non-delinquent interest holders, (d) debtor-creditor implications, (e) effect on tenancies-by-the-entirety, and (f) the apparent elevation of the Internal Revenue Service's creditor status.

I. BACKGROUND TO Rodgers

Under section 6321 of the Internal Revenue Code,11 when a taxpayer refuses to pay his or her assessed federal taxes upon demand12 a lien automatically accrues13 and attaches to "all property and rights to property . . . belonging to such person."14 The IRS


12. If the taxpayer fails to pay the tax within ten days of assessment, notice and demand, the government becomes a secured creditor (instead of retaining its general creditor status). See Practicing Law Institute, Federal Tax Practice and Procedure: Practicing Before the Internal Revenue Service 21 (1976). Unless waived, demand is essential for the creation of the lien. See Bauer v. Foley, 404 F.2d 1215 (2d Cir. 1968); United States v. Coson, 286 F.2d 453 (9th Cir. 1961).

13. See Note, Federal Priorities and Tax Liens, 63 Colum. L. Rev. 1259, 1272 (1963); Comment, Federal Tax Lien—Is it Effective Against a State Homestead Exemption?, 52 N.C.L. Rev. 695, 695-96 (1974). Plumb notes that "it is quite possible that a financially troubled taxpayer, who has deferred payment of an assessed tax, will not know whether or when a tax lien has been imposed upon all his property because initially the general tax lien is usually of the secret variety. It arises automatically on the occurrence of certain events and without express notification to the taxpayer." W. PLUMB, supra note 10, at 10. Justice Blackmun noted that Plumb's views may be due "particular attention," since Plumb was the principal draftsman of the Federal Tax Lien Act of 1966. Rodgers, 461 U.S. at 717 n.6 (Blackmun, J., dissenting).

may enforce its lien by initiating a civil action under section 7403 in a federal district court. The lien provision of section 6321 is written in broad and sweeping language and is a major instrument of tax law enforcement.

In Rogers, the Supreme Court responded to a lien enforcement problem, the resolution of which had resulted in a conflict among the circuits. The courts of appeal were grappling with

267 (1945).

15. 26 U.S.C. § 7403 (1982); Plumb, Federal Tax Collection and Lien Problems (First Installment), 13 Tax L. Rev. 249 (1958). Subdivision (c) of section 7403 authorizes the district court to "decree a sale" of all property upon which the United States holds a lien. The government may also sue in equity for the unpaid amount, obtain judgment and exercise rights of ordinary judgment creditors. Rogers, 461 U.S. at 682. See United States v. Haar, 27 F.2d 250 (5th Cir.), cert. denied, 278 U.S. 634 (1928); W. PLUMB, supra note 10, at 252.

16. Section 6321 provides:
If any person liable to pay any tax 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, whether real or personal, belonging to such person.

26 U.S.C. § 6321 (1982). See also W. PLUMB, supra note 10, at 18; Plumb, supra note 15, at 251. Plumb calls the section 6321 lien a "catchall lien"—it attaches to property of "any person" liable to pay "any tax" and this includes "all property and rights to property" belonging to that person.

17. See Comment, supra note 13. The general purposes of the lien include: the immobilization of the taxpayer's property while enforcement procedures are initiated (or tax is paid); uniformity, see infra, note 18; and the securing of the government's priority over other creditors. See W. PLUMB, supra note 10, at 13. See also United States v. Brosnan, 363 U.S. 257 (1960). The purpose of the Federal Tax Lien Act of 1966 (codified as amended at 26 U.S.C. §§ 6321, 6323 (1982)) was to adjust the tax liens so that they had the same priority scheme as the Uniform Commercial Code. See Pine Builders, Inc. v. United States, 413 F. Supp. 77, 80 (E.D. Va. 1976). The Rodgers Court saw the purposes of the "formidable arsenal of tax collection tools" as including the assurance of "the prompt and certain enforcement of the tax laws in a system relying primarily on self-reporting." Rodgers, 461 U.S. at 683.

18. Of the eight circuits which have ruled on the issue of the government's right to force sale of the entirety of jointly owned property, six have held that the sale was allowed under §§ 6321 and 7403 of the Code. These six include the second, third, fourth, seventh, eighth, and ninth circuits. See Herndon v. United States, 501 F.2d 1219, 1222-23 (8th Cir. 1974); United States v. Kocher, 468 F.2d 503, 506-07 (2d Cir. 1972), cert. denied, 411 U.S. 931 (1973); United States v. Overman, 424 F.2d 1142, 1146 (9th Cir. 1970); Washington v. United States, 402 F.2d 2, 7 (4th Cir. 1968), cert. denied, 402 U.S. 987 (1971); United States v. Trilling, 328 F.2d 699, 702-03 (7th Cir. 1964); United States v. Heasley, 283 F.2d 422 (8th Cir. 1960); United States v. Mazzara, 530 F. Supp. 1380, 1384-85 (D.N.J. 1982). The minority circuits include the fifth and tenth. See United States v. Hershberger, 475 F.2d 677 (10th Cir. 1973); Folsom v. United States, 306 F.2d 361 (5th Cir. 1962). The Rodgers case arose in the fifth circuit.
the difficult question of how to give effect to both the federal tax lien provision and state homestead exemption laws when property was jointly owned. The issue was difficult: whether the IRS could enforce lien rights against a delinquent taxpayer holding only a partial interest in property, and force the sale of the entire property. This issue first arose before the Court of Appeals for the Fifth Circuit in United States v. Folsom, and has caused problems ever since.

In Folsom, the federal government sought to enforce its lien through section 7403(c) of the Code and force sale of the entirety of the real property in which the delinquent taxpayer owned a one-sixth undivided interest. The district court held that the government could enforce its tax lien and force judicial sale of the entire property. The court of appeals reversed, holding that section 7403 allows for forced sale of only the delinquent taxpayer’s interest in the real property. This interest limitation would allow for a forced sale of the delinquent taxpayer’s one-sixth interest, but would preclude sale of the entirety of the property. Since the Folsom decision, the circuits have divided on the issue of whether a state-defined property interest may operate to prevent forced sale of the entire property.

The stakes in Rodgers were high because it dealt with homesteads, which are devised to protect an owner’s possession and enjoyment against creditors. A homestead is defined as the dwelling house constituting the family residence, together with the land
on which it is situated and the appurtenances connected therewith.\textsuperscript{26} 

The issue confronted in Rogers is not whether the government will recover duly owed taxes.\textsuperscript{27} Rather, it is whether the federal tax collector should delay enforcement against the homestead, or foreclose immediately.\textsuperscript{28} The problem is one of promptness, not certainty.\textsuperscript{29} The homestead exemption has been likened to a life estate since it is an interest in the holder until death or abandonment.\textsuperscript{30} If the federal government is prevented from immediately forcing the sale of the homestead, it must instead wait until the interest holder dies or abandons the homestead, whichever comes first.\textsuperscript{31} Excluding the situations where property values decrease or the lien amount exceeds the value of the property, little is lost by delayed enforcement.\textsuperscript{32} Although the IRS is deprived of the use value of the sale proceeds, the accruing interest on the assessed deficiency should provide adequate compensation.\textsuperscript{33} Since much will be lost by immediate enforcement (firmly established homestead rights), and little gained, public policy would appear to be best served by delayed enforcement.

State law has a crucial role to play in the federal tax collection scheme.\textsuperscript{34} Federal courts, including the Supreme Court, must look to state law to determine the property rights to which the tax lien

\begin{itemize}
  \item \textsuperscript{26} 40 C.J.S. Homesteads § 1 (1984).
  \item \textsuperscript{27} This assumes that delay will not result in significant loss to the government. See infra text accompanying notes 123-25 (discussion of Justice Blackmun's dissent).
  \item \textsuperscript{28} See infra note 54.
  \item \textsuperscript{29} See supra note 17 and accompanying text. The Court saw the "prompt and certain enforcement" of the tax laws as among the purposes of sections 6321, 6331 and 7403. Rodgers, 461 U.S. at 683.
  \item \textsuperscript{30} The Rodgers Court clearly recognized the similarity of the Texas homestead exemption and life estates, although they stated that it was a somewhat "hazardous analogy." 461 U.S. at 685-86 (citing Flew v. Qualtrough, 624 S.W.2d 335, 337 (Tex. App. 1981) (homestead exemption, unlike life estate, can be lost by abandonment)).
  \item \textsuperscript{31} Under Texas law, the homestead interest is a vested estate in land and can be divested during the lifetime of the holder only by abandonment or voluntary conveyance. Paddock v. Siemoneit, 147 Tex. 571, 585, 218 S.W.2d 428, 436 (1949). The factors causing loss of the homestead interest vary from state to state. These factors include death, abandonment, alienation, dissolution of family relationship, estoppel or waiver. 40 C.J.S. Homesteads § 15 (1936).
  \item \textsuperscript{32} Interest accrues on unpaid taxes from the date payment is due until payment is made. 26 U.S.C. § 6601(a) (1982). See also W. Plumb, supra note 10, at 227.
  \item \textsuperscript{33} In his dissent, Justice Blackmun questioned the advantages of immediate enforcement of lien rights through forced sale of the entire property. 461 U.S. at 724-25.
  \item \textsuperscript{34} See W. Plumb, supra note 10, at 27-30. See also supra note 2.
\end{itemize}
may attach.\textsuperscript{35} The threshold question is whether the taxpayer has "property" or "rights to property" to which the tax lien could attach.\textsuperscript{36} State law governs in the area of definition of these property interests.\textsuperscript{37}

Under this approach to federal tax collection, both state and federal law are involved and are said to strike "a proper balance between the legitimate and traditional interest which the State has in creating and defining the property interest of its citizens, and the necessity for a uniform administration of the federal revenue statutes."\textsuperscript{38} This mutual involvement becomes problematic when federal and state laws overlap.\textsuperscript{39} Such overlapping often occurs when the government attempts to enforce\textsuperscript{40} its lien against a taxpayer who holds only a fractional interest in the property—and the holder of the remaining interest is unindebted—by selling the entire property instead of only the delinquent taxpayer's interest.

A cursory review of the "rules" in this area is not particularly


\textsuperscript{36} \textit{Aquilino}, 363 U.S. at 512.

\textsuperscript{37} \textit{Id.} at 513; see also United States v. Bess, 357 U.S. 51, 55 (1958). In short, state law creates the property and rights to property to which the lien attaches. Once state law determines the taxpayer's interest in the property, "we enter the province of federal law" to determine the consequences of the interest. \textit{Aquilino}, 363 U.S. at 514. The \textit{Aquilino} Court stated: "[w]e have consistently held [that federal law] determines the priority of competing liens asserted against the taxpayer's 'property' or 'rights to property.'" \textit{Id.}

After it is determined that state law has created sufficient interests in the taxpayer for the lien to attach, state law is inoperative to prevent attachment. \textit{Bess}, 357 U.S. at 56-57. The \textit{Rodgers} case involved issues of enforcement, not attachment. See infra note 40.

\textsuperscript{38} \textit{Aquilino}, 363 U.S. at 514. This balance is also discussed extensively in \textit{Brosnan}. See infra note 42. For an early discussion of state law involvement, see Comment, Property Subject to the Federal Tax Lien, 77 HARV. L. REV. 1485 (1964).

\textsuperscript{39} The \textit{Rodgers} Court did not see much of an overlap. Instead it saw the limits as clearly separable. The Court stated: "[i]t has long been the axiom of our tax collection scheme that, although the definition of underlying property interest is left to state law, the consequences that attach to those interests is a matter left to federal law." \textit{Rodgers}, 461 U.S. at 685 (citing United States v. Mitchell, 403 U.S. 190, 205 (1971)). Apparently, they viewed forced sale of the entire homestead interest as consequential and therefore properly a federal role.

The court of appeals in \textit{Ro[d]gers} (the appellee's name was misprinted as "Rogers" in the title, though not the body, of the court of appeals' decision) had distinguished \textit{Mitchell}, and other cases, on the ground that they did not involve homestead property interests. 649 F.2d 1117, 1121 n.5 (5th Cir. 1981) \textit{rev'd}, 461 U.S. 677 (1983).

\textsuperscript{40} It should be noted that the attachment of the lien is not at issue here. The central issue in both \textit{Rodgers} and \textit{Folsom}, rather, is the time and method of enforcement of the tax lien.
enlightening. As a general rule, the exemption of property from federal tax collection is governed by federal, not state law.\textsuperscript{41} State law determines however, what property rights the taxpayer holds.\textsuperscript{42} Federal law "merely attaches consequences, federally defined, to rights created under state law."\textsuperscript{43} These two principles conflict when state definition precludes federal enforcement of the lien. This conflict arises, for example, when the IRS seeks to enforce its rights and force sale of the entirety of the property but

\textsuperscript{41} See, e.g., United States v. Heffron, 158 F.2d 657 (9th Cir.), cert. denied, 331 U.S. 831 (1947) (bankrupt debtor may not invoke a state homestead exemption to defeat a federal tax lien). It has been stated that state homestead exemption laws are inapplicable to tax collection procedure. See United States v. Heasley, 283 F.2d 422, 427 (8th Cir. 1960).

The assertion that state law is "inapplicable" is clearly true in some collection contexts. Section 6334 of the Code specifically exempts certain property from administrative levy. Subsection (a) specifically exempts: wearing apparel and schoolbooks; fuel, provisions, furniture, and personal effects; books and tools of the trade, business or profession; unemployment benefits; undelivered mail; certain annuity and pension payments; workmen's compensation payments; child support payments; and minimum wages. 26 U.S.C. § 6334(a) (1982). Subsection (c) provides: "Notwithstanding any other law of the United States, no property . . . shall be exempt from levy other than the property specifically made exempt by subsection (a)." 26 U.S.C. § 6334(c) (1982).

Plumb states that, "[f]or unexplained reasons exemption is provided only from levy, not from the lien itself, so theoretically the Government could circumvent this limited sanctuary by initiating a judicial action to foreclose its tax lien, but cases of this type cannot be found in the reports." W. PLUMB, supra note 10, at 20-21.

\textsuperscript{42} The Supreme Court, in United States v. Brosnan, 363 U.S. 237 (1960), stated that federal tax liens are "wholly creatures of federal statute," id. at 240, but went on to say that state law should nevertheless play a major role. The Court's reasoning is worth full recitation:

We nevertheless believe it desirable to adopt as federal law state law governing divestiture of federal tax liens, except to the extent that Congress may have entered the field. It is true that such liens form part of the machinery for the collection of federal taxes, the objective of which is "uniformity, as far as it may be." United States v. Gilbert Associates, 345 U.S. 361, 364. However, 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. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures. Long accepted nonjudicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well-established state procedures governing their enforcement, or superimposing on them a new federal rule.

\textit{Id.} at 241-42.

state law requires that the unindebted cotenant be left undisturbed.\footnote{44}

II. The Rodgers Decision

A common situation in which this dilemma arises is one where a husband and wife own homestead property, and one of them becomes individually indebted to the federal government for unpaid taxes. When the federal government obtains a section 6321 lien against the indebted spouse’s interest in the property and moves to enforce its lienholder’s rights through a judicially forced sale, state homestead exemptions protecting the unindebted spouse may arise to block enforcement.\footnote{45} The Rodgers Court was presented with exactly this problem.\footnote{46}

The Court held that section 7403 of the Code\footnote{47} empowers a federal district court to force the sale of the entire homestead despite the fact that the spouse of the delinquent taxpayer, who holds an undivided one-half interest in the property,\footnote{48} is unindebted. This power is limited “to some degree” by the equitable discretion of the federal district courts,\footnote{49} and the nondelinquent spouse is entitled to “complete compensation” out of the proceeds of the sale.\footnote{50}

The Rodgers decision involves two cases which were consolidated for oral argument before the Court of Appeals for the Fifth Circuit. Both cases, United States v. Rodgers,\footnote{51} and Ingram v. Dallas Department of Housing & Urban Rehabilitation,\footnote{52} involved community property\footnote{53} and the homestead exemption provisions of the

\begin{footnotes}
\footnotetext{44}{See infra note 53 and accompanying text.}
\footnotetext{45}{See supra text accompanying note 39; See also infra note 54.}
\footnotetext{46}{See infra notes 54-56 and accompanying text.}
\footnotetext{47}{26 U.S.C. § 7403 (1982). See supra note 6.}
\footnotetext{48}{Both Rodgers and its companion case Ingram involved community property and homestead interest under Texas law. See infra note 55 and accompanying text. For discussion of the impact of the Rodgers decision upon tenancy-by-the-entirety property, see infra notes 152-59 and accompanying text.}
\footnotetext{49}{Rodgers, 461 U.S. at 703-11.}
\footnotetext{50}{Id. at 680.}
\footnotetext{51}{649 F.2d 1117 (5th Cir. 1981), rev’d, 461 U.S. 677 (1983).}
\footnotetext{52}{649 F.2d 1128 (5th Cir. 1981), rev’d, 461 U.S. 677 (1983).}
\footnotetext{53}{The Texas community property interest is a matter of both constitutional and statutory entitlement. See infra note 56. Plumb sees community property law as particularly troubling in this area:}
\footnotetext{54}{No safe generalizations may be made concerning the subject of commu-}
\end{footnotes}
Texas Constitution. The Texas homestead exemption provides for strong protection of the family homestead and has been described as "certainly sweeping and probably the most far reaching of any in the country." Lucille and Phillip Rodgers, husband and wife, owned as community property a residence in Dallas, Texas, which they occupied as community property to liens for the separate tax liabilities of husband and wife, because of the wide variety of rules governing the rights of creditors in the eight community property states, and the paucity of authority on some of the more knotty problems that may arise.

W. PLUMB, supra note 10, at 32 (citations omitted). The Rodgers case appears to be one of these "knotty" problems.

54. The Texas exemption is a constitutional exemption. Article 16 of the Texas State Constitution grants two major protections for the family and the family homestead. It provides for both the establishment of a homestead, TEX. CONST. art. XVI, § 50, and the manner of descent of rights in the homestead to members of the immediate family, thereby protecting the family in case of the death of the owner, TEX. CONST. art. XVI, § 52.

Section 50, provides that "[t]he homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of debts . . . ." TEX. CONST. art. XVI, § 50 (emphasis added). Section 52 provides:

On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same . . . .

TEXAS CONST., art. XVI, § 52.

In substance, the Texas Constitution provides for an exemption of the homestead property from the reach of most creditors under section 50, and also gives the members of the family unit rights in the homestead itself under section 52. Under Texas law, upon marriage, where one spouse owns property to be used as a family home, the other spouse receives a separate, undivided possessory interest in the homestead. TEXAS CONST., art. XVI, § 52. Texas case law has clearly established that this interest in the homestead pursuant to the constitution is a bona fide property interest, and not merely an exemption or matter of statutory entitlement. See Paddock v. Siemoneit, 147 Tex. 571, 218 S.W.2d 428 (1949).


56. Article 16, section 15 of the Texas Constitution provides:

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired,
pied as their homestead. In 1972, the IRS issued assessments of more than $900,000 against Phillip for unpaid federal wagering taxes.\textsuperscript{67} Three years after the assessments were issued, Phillip Rodgers died. Lucille Rodgers continued to occupy the property as her homestead residence and, at the time this case was heard, resided there with her second husband. In 1977, the federal government filed suit under sections 7402 and 7403 of the Code to reduce the assessments against Phillip Rodgers to a lien judgment, and enforce the judgment through a judicially forced sale of the Rodgers' property.\textsuperscript{57} On cross-motion for summary judgment, the district court held that the federal tax lien could not defeat Lucille Rodger's state-defined right to have her homestead exempt from forced sale.\textsuperscript{59} The Court of Appeals for the Fifth Circuit affirmed on the homestead issue.\textsuperscript{60}

In the companion case of \textit{Ingram v. Dallas Department of Housing & Urban Rehabilitation},\textsuperscript{61} similar issues were presented. During their marriage, Joerene and Donald Ingram purchased a resi-

\begin{quote}
whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; and the spouses may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned by one of them, or which thereafter might be acquired, shall be the separate property of that spouse; and if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property.
\end{quote}

\textsc{Tex. Const.} art. XVI, § 15.

Section 5.01 of the Texas Family Code provides:

(a) A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during marriage by gift, devise, or descent; and

(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

(b) Community property consists of the property, other than separate property, acquired by either spouse during marriage.

\textsc{Tex. Fam. Code Ann.} § 5.01 (Vernon 1975).

\textsuperscript{57} These taxes remained unpaid until the time of Philip Rodgers death in 1974. Rodgers, 461 U.S. at 687.

\textsuperscript{58} \textit{Rodgers}, 649 F.2d at 1119. The government also argued that it was entitled to attorney's fees under 42 U.S.C. § 1988 (1982). \textit{Id}.

\textsuperscript{59} The circuit court distinguished between "mere" homestead exemptions and bona fide homestead property rights. \textit{Rodgers}, 649 F.2d at 1125-27.

\textsuperscript{60} The fifth circuit is one of the minority circuits which follows the \textit{Folsom} interest limitation. \textit{See supra} notes 20-24 and accompanying text.

\textsuperscript{61} 649 F.2d 1128 (5th Cir. 1981).
dence which they owned as community property and occupied as their homestead. In both 1972 and 1973, the IRS issued assessments against Donald Ingram in the amount of $9000. A joint assessment was also issued against both Joerene and Donald in the amount of $283.33. In 1975, the Ingram home was destroyed by fire. In September of 1975, the Ingrams obtained a divorce. The negotiated divorce settlement provided that Donald would convey his one-half interest in the community property to Joerene for $1500. Joerene attempted to sell the fire-destroyed property, but was unsuccessful—apparently due to the federal tax liens encumbering the property.

Joerene Ingram filed suit in federal district court to remove the federal tax lien against the property, quiet title, and enjoin demolition. The government removed the suit to the District Court for the Northern District of Texas. On cross-motion, summary judgment was granted in favor of the government. The Court of Appeals for the Fifth Circuit affirmed in part and reversed in part, holding that the forced sale would be allowed in order to obtain the $283.33 in joint tax assessments against both Joerene and Donald Ingram, but not to obtain the $9000 individual assessment against Donald. The taxpayers in Rodgers and

62. Id. at 1130.

63. The Supreme Court noted that the inability to sell was "apparently due" to the encumbrance of federal tax liens. Rodgers, 461 U.S. at 688. The court of appeals did not mention this. See Ingram, 649 F.2d at 1130.

The situation was further complicated when the Dallas Department of Housing and Urban Rehabilitation notified Joerene Ingram that unless action was taken, the premises would be demolished (hence the title of the case—Ingram v. Dallas Dep't of Housing & Urban Rehabilitation). Joerene took no action to remedy the situation and a work order to demolish was issued. Id.


66. Both Donald and Joerene had failed to pay their joint income tax liability for 1971. Id. at 1130.

67. Id. at 1132. The court of appeals offered two separate grounds for its decision. First, it held that the Folsom interest limitation should be applied, and that forced sales of the entirety of the property involved in certain joint ownership situations should not be allowed. Second, it held that even if a sale would be allowed in the joint tenancy situation, the Texas homestead exemption would operate to preclude enforcement. The court of appeals went so far as to say that this interest limitation applies to any tenancy situation in which unindebted third parties are co-owners with the delinquent taxpayer. Id. at 1125.
Ingram appealed. The Supreme Court granted certiorari "in order to resolve a conflict among the Courts of Appeals as to the proper interpretation of [section] 7403." The Rodgers Court characterized the facts of the two consolidated cases as "legally comparable, but quite distinct . . . ." The Court saw both cases as involving a common issue:

[W]hether [section] 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who did not owe any of his indebtedness, also has a separate "homestead" right as defined by Texas law.

The Rodgers Court divided 5-4, holding in favor of the government. The majority held that section 7403 does empower the federal district court to force the sale of the homestead property despite the fact that one spouse, holding a one-half undivided interest in the property, is unindebted. The district court may exercise its equitable discretion in enforcing this section, and the unindebted spouse must receive "complete compensation" from the sale proceeds. The Court expressly declined to follow the Folsom minority rule relied upon by the court of appeals stating: "We agree with the prevailing view that such a restrictive reading of § 7403 flies in the face of the plain meaning of the statute."

A. Justifications Offered for Forcing Sale of the Homestead

The Court offered four arguments to support its reversal of the court of appeals: (1) the plain language of section 7403; (2) the general policies underlying tax collection statutes; (3) the historical background of section 7403 and its similarity to in rem

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68. Rodgers, 461 U.S. at 690.
69. Id. at 687.
70. Id. at 680.
71. Justice Brennan wrote for the majority, joined by Justices Burger, Marshall, Powell and White; Justice Blackmun dissented, and was joined by Justices Rehnquist, Stevens and O'Connor.
72. Plumb discusses indivisible homestead rights as allowing attachment of liens, but preventing enforcement: "[T]hough the liability runs against only one spouse, it may not be enforced by sale during the life of the unindebted spouse." W. PLUMB, supra note 10, at 38. Plumb also discusses tenancy-by-the-entirety property as "one well-established sanctuary beyond the reach of the Government's tax lien." Id. at 37.
73. Rodgers, 461 U.S. at 680.
74. Id. at 691.
sales; and (4) the contrast between section 7403 and section 6331\(^{76}\) of the Code.

Like the courts of appeals which had previously held that such sales would be allowed,\(^{77}\) the Court first, and most strongly, emphasized the plain language of section 7403. After setting forth section 7403 in its entirety, the Court restated certain portions, selectively emphasizing its broad language. According to the Court, subsection 7403(a) was entirely dispositive of the issue:

Section 7403(a) provides, not only that the Government may “enforce [its] lien,” but also that it seek to “subject any property, [of] whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability.” This clause in and of itself defeats the reading proposed by the Court of Appeals.\(^{77}\)

The Court rejected the \textit{Folsom} interest limitation and instead stated that section 7403 “must”\(^{78}\) be read to contemplate not only the sale of the taxpayer’s own interest, but the sale of the entire property.\(^{78}\) In reaching this conclusion the Court stressed the fact that section 7403(c) provides for distribution of the sale proceeds “according to the findings of the court in respect to the interests of the parties and of the United States.”\(^{80}\) The requirement of distribution of the proceeds according to “the interests of the parties” was interpreted as a suggestion that sale of the entirety of the property was intended.

The Court further stated that its holding was consistent with the policy “inherent” in tax statutes. The Court did not elaborate on this point but merely referred to its earlier discussion of the purposes of tax-collection tools.\(^{81}\) This policy favors the prompt and certain collection of taxes.\(^{82}\) In the same paragraph, the Court stated that it makes “considerable sense”\(^{83}\) to allow the sale of the entirety of the property when the delinquent taxpayer’s in-

\(\text{footnotes:}\)
75. Section 6331 grants the Secretary of the Treasury power to impose an administrative levy on the delinquent taxpayer’s property.
76. See, e.g., United States v. Overman, 424 F.2d 1142, 1146 (9th Cir. 1970).
77. Rodgers, 461 U.S. at 692. See supra note 23.
78. Rodgers, 461 U.S. at 693.
79. Id. at 694.
80. Id. at 693.
81. Id.
82. See supra note 33.
83. Rodgers, 461 U.S. at 694.
interest is worth "significantly more" if sold together with other interests in the property. According to the majority, section 7403 sales have been traditionally viewed much like in rem sales: third party interests that were attached to the property could be included in and extinguished by the judicial sale. The majority stated that one of the evident purposes of section 7403 was to enhance the position of the federal tax collector. With the passage of sections 6321 and 7403 and their predecessors, the federal tax collector was to gain some of the many advantages that the state tax collector already had through the use of in rem sales. The state tax collector could force the sale and bring in the interests of third parties in the same action. The Court again stressed the fact that section 7403 provides for third party compensation out of the proceeds of sale, commensurate with their interests in the property. One can "assume" from the fact that such a reference for distribution according to the interests of the parties was stressed, that section 7403 sales were intended to include third-party interests.

Lastly, the Court stated that their interpretation was bolstered by an examination of the elements of two tax collection tools: the section 6331 administrative levy and the section 7403 tax lien. Under section 6331, the government may sell only the property "belonging to such person." Since section 7403 does not have such a limitation, it can be inferred that Congress did not intend the section 7403 sale to be limited to the delinquent taxpayer's interest alone. Congress has applied such limitations to other tax collection tools, but evidently declined to impose such limitations on section 7403.

84. Id.
86. 461 U.S. at 695.
87. Id.
88. Id.
89. See infra text accompanying notes 128-30.
B. Limits of Equitable Discretion

The Court realized that in certain situations financial compensation would not be an adequate substitute for the lost property, and mitigated the harshness of its rule by imposing a judicial limit on its application: the equitable discretion of the federal district courts.

Section 7403 contains within it both the word "shall" and the word "may"; therefore, an examination of the wording of the statute alone did not help the Court to decide whether Congress intended to allow the application of the equitable discretion of the district courts. After careful consideration, the Court held that although it was a close question, a forced sale is not required in all circumstances and Congress did intend to grant equitable discretion to the district courts in their application of section 7403.

The Court held that certain factors must be considered by the district court in deciding whether to force sale. These "paramount" factors include: prejudice to the government's financial interests; the normal expectations of third parties; prejudice to the interests of the third parties involved; and the relative character and value of the interests of the liable and non-liable parties.

If the government has nothing to gain financially by a whole (versus partial) sale, then forced sale of the entirety would be unnecessary. In Rodgers, the government conceded this point at oral argument. The prejudice to the government's position would be measured by comparing the market price of the property interest if it is sold separately with its price if the entire property is sold. As the Court stated: "Simply put, the higher the expected market price, the less the prejudice, and the less weighty

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91. Rodgers, 461 U.S. at 704.
92. The Rodgers decision has been relied upon as holding that the task of exercising equitable discretion should be left to the court of first instance. See United States v. Sears, Roebuck, & Co., 719 F.2d 1386, 1395 n.2 (9th Cir. 1983).
93. 26 U.S.C. § 7403 (1982). Rodgers has been subsequently cited, as an interesting comparison, as to whether the word "may" grants discretion, and if so, to what degree. See, e.g., UAW v. Donovan, 570 F. Supp. 210, 219 (D.D.C. 1983); Sears, 719 F.2d at 1395.
94. Rodgers, 461 U.S. at 706.
95. Id. at 710.
96. Id. at 710-11.
97. See infra notes 145-49 and accompanying text. In many situations, little is to be gained by immediate enforcement. See supra notes 27-33 and accompanying text.
98. Rodgers, 461 U.S. at 710 (citing Oral Arg. at 7, 13; Petitioner's Reply Brief at 8, n.5).
the Government's interest in going ahead with a sale of the entire property."

The Rodgers Court also stated that if the non-liable party had no legal expectation that the homestead property would be protected from forced sale, then there would be little reason not to authorize sale. The courts therefore should consider these expectations in their determination of whether to allow sale. The Court then stated that the district courts should consider the likely prejudice to third parties resulting from a forced sale and make their determination with due consideration of both personal dislocation costs and undercompensation. The Court referred to situations in which monetary payment would clearly be inadequate compensation for loss of a "roof over one's head." The Court explained through example: If a third party owns real property but has no present possessory or fee interest in the property, there is little reason not to allow sale. Conversely, if the third party has a possessory or fee interest and that interest is worth 99% of the value of the property, then there is "virtually no reason to allow the sale to proceed."

The Court noted that its list of factors to be considered by the district courts was not intended to be exhaustive and should not be used "to the exclusion of common sense and consideration of special circumstances." The Court made it clear that forced sale would be the rule, not the exception, stating: "We do emphasize, however, that the limited discretion accorded by § 7403 should be exercised rigorously and sparingly, keeping in mind the Government's paramount interest in prompt and certain collection of delinquent taxes."

99. Rodgers, 461 U.S. at 710.

100. Id. at 710-11. Since the circuits had been divided on this issue, see supra note 18, the expectations may vary by jurisdiction. See United States v. Brosnan, 363 U.S. 237 (1960) (federal tax enforcement should not unnecessarily disrupt local property relationships). See also supra note 42.

101. Rodgers, 461 U.S. at 711.

102. Id. at 704. See supra notes 27-32 and accompanying text; see also infra notes 145-97 and accompanying text.

103. Rodgers, 461 U.S. at 711.

104. Id.

105. Id.
C. The Rodgers Dissent

The dissenters agreed with the majority's holding that the court of appeals decision was overly broad. They also agreed with the majority's disposition of the Ingram case, holding that jointly owned property could be forcibly sold where joint tax liability was involved. They disagreed, however, with the decision regarding Mrs. Rodgers' claim.

Justice Blackmun argued that the majority had overlooked two fundamental legal principles in its decision. First, the majority's holding was directly contrary to the common law. At common law, a "lien of a judgment . . . cannot be made effectual to bind or to convey any greater or other estate than the debtor himself, in the exercise of his rights, could voluntarily have transferred or alienated;" the lienholder enjoys rights in property no greater than the debtor; the lienholder, in effect, can only "step into the shoes" of the debtor. This principle is applicable to tax liens and their enforcement—the tax collector may not enforce its tax lien and thereby place itself in a better situation than the debtor would have been in himself.

In Rodgers, the debtor could not have transferred or sold the whole of the homestead property without the consent of his spouse. Thus, the dissent concluded, allowing the federal government to enforce its lien against the debtors and to judicially force the sale of the entirety of the homestead property would contradict settled common law.

Secondly, although the dissenters acknowledged that sections 6321 and 7403 are written in

106. Id. at 729.
107. Id. at 713.
108. Id. at 714.
110. See Tex. Const. art. XVI, § 50. See also supra note 54.
111. The dissent noted that in most situations, a joint owner does have the power to force sale or partition. See infra note 126. Therefore it does no injury to other joint owners to allow the government to force sale under section 7403. Examples of such joint ownership situations include joint tenancy and tenancy-in-common. Rodgers, 461 U.S. at 714 (Blackmun, J., dissenting).
broad and sweeping language and may conceivably be viewed as subject to the interpretation of the Rodgers majority, they argued that these provisions should not be construed literally. Justice Blackmun argued that courts faced with broadly worded statutes in derogation of the common law, should hesitate to apply them literally. He concluded that in the absence of clear congressional intent to the contrary, the courts should presume that Congress "did not mean by its use of general language to contravene fundamental precepts of the common law." The Rodgers dissent further asserted that there is no clear evidence that Congress intended to abrogate the common law principle of lienholders' rights. Indeed, Justice Blackmun pointed to contrary evidence—that Congress intended to incorporate the common law principle into section 6321. Strong evidence of non-abrogative intent is found in a report compiled for the House Ways and Means Committee tracing the legislative history of the Federal Tax Lien Act of 1966. The report states, in part:

The homestead exemption laws of the States do not apply as against a federal tax lien. But the homestead laws of some States have been held to create an indivisible and vested interest in the husband and wife, which cannot be subjected to levy and sale for the separate tax of one of them.

Congress clearly recognized the principle of lienholders' rights stressed by the dissenters. This report noted that some state homestead laws, including Texas', had been held to create an indivisible and vested interest in the husband and wife, which could not be subjected to levy and sale for the separate tax of one of them. Congress did not propose to change this settled law, but suggested that in such situations a court could "declare, but not foreclose, the lien."

112. Justice Blackmun stated: "I do not dispute that the general language of § 7403, standing alone, is subject to the interpretation the Court gives it. From its enactment in 1868 to the present day, the language of this statute has been sweeping; read literally, it admits of no exceptions." 461 U.S. at 715-16 (footnotes omitted).

113. Id. (citing Imbler v. Pachtman, 424 U.S. 409, 417 (1976)).

114. Id.


116. Id. at 177. See infra notes 153-59 and accompanying text.

117. Id., citing Jones v. Kemp, 144 F.2d 478 (10th Cir. 1944); Paddock v. Siemoneit, 147 Tex. 571, 584-85, 218 S.W.2d 428, 436 (1949).

118. LEGISLATIVE HISTORY, supra note 115, at 177.
ure of legislative attempts to extend the reach of federal tax liens to tenancies-by-the-entirety, asserting that these failures demonstrated a clear intent to retain the common law. He stressed the fact that tenancies-by-the-entirety, like the Texas homesteads, "could not be sold to enforce the tax liability of one spouse."\[119\]

Blackmun presented an extensive discussion of Mansfield v. Excelsior Refining Co.\[120\] The majority had noted that, read broadly, Mansfield stands on "all fours" with the Rodgers holding.\[121\] Blackmun argues, however, that Mansfield undermines, not supports, the majority's holding and that its broad reading of Mansfield reflects only on the true breadth of the Rodgers holding. According to the dissent, the majority's interpretation of Mansfield, authors without the consent of the owner of the fee, a judicial sale of a building should a tenant fail to pay his taxes, a judicial sale of a farm should the holder of an easement across it become delinquent, or a judicial sale of a condominium or cooperative apartment house to satisfy the tax debt of any co-owner.\[122\]

Justice Blackmun criticized the major arguments presented by the Court in support of its holding. He first attacked the Court's argument that its broad reading of section 7403 was consistent with the policies favoring prompt and certain collection of delinquent taxes.\[123\] This rationale, he wrote, is overly broad and "would support any exercise of governmental power to secure tax payments."\[124\] He argued that the immediate sale of the homestead may in fact yield very little money, after the value of the spouse's one-half homestead interest is deducted from the sale price. If the government were to wait until loss or abandonment, its discounted yield would be about the same as it would be following the majority's procedure of immediate sale. The principle difference is that under the common law rule "Mrs. Rodgers' entitle-
ment to live out her life on her homestead would be respected."

The dissent also criticized the majority’s contention that a contrast of sections 6331 and 7403 supports the judicially enforced sale by the entirety. Although section 7403 does entitle the government to force partition in certain situations where the delinquent taxpayer has the right to do so, this fact, in the dissent’s opinion, does not justify the Court’s expansive conclusion. The broad language of section 7403 empowers the federal government to enforce its lien and to exercise only those rights possessed by the delinquent taxpayer.

Finally, the dissent criticized the majority’s contention that its reading of section 7403 is consistent with the traditional powers of a taxing authority in an in rem proceeding. According to Justice Blackmun, this is simply not so. The Court ignores the fact that the rules pertaining to in rem sales do not apply when third parties have indefeasible rights and interests in the property. According to the dissent, “the traditional distinction between taxes for which the land is liable and tax liabilities personal to the taxpayer would preclude such a sale.”

The dissent compared the facts in the Rodgers case with those in Ingram, to explain why it would force sale in one instance, but not the other. Because Mrs. Rodgers was unindebted to the federal government and had an indestructible property right in the homestead, the dissent reasoned that section 7403 was not intended to allow forced sale of her property. The facts are materially different in Ingram. Mrs. Ingram and her husband were jointly liable for unpaid federal taxes and since they were divorced the property was subject to partition under state law.

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125. Id. at 725.
126. Partition is defined as the “dividing of lands held by joint tenants, coparceners, or tenants-in-common, into distinct portions, so that they may hold them in severalty.” BLACK’S LAW DICTIONARY, 1008 (5th ed. 1979). For a discussion of the background of partition law, and the several forms, see R. POWELL & P. ROHAN, POWELL ON REAL PROPERTY ¶¶ 609-614 (1968).
127. Rodgers, 461 U.S. at 726. For a discussion of the majority’s reasoning, see supra text accompanying note 86.
128. See supra text accompanying note 39.
129. Rodgers, 461 U.S. at 726.
130. Id. at 728.
131. Id. at 729-30. See W. PLUMB, supra note 10, at 35 (discussing partition).
III. IMPACT OF Rodgers

The Rodgers Court had a difficult task: reconciling the roles of state and federal law which had overlapped in the area of federal tax liens on jointly owned property. The Rodgers decision did "solve" this problem. Its solution, however, is a rather simplistic one: state homestead exemption laws cannot operate, either as a property right or exemption,\(^{132}\) to preclude enforcement of a federal tax lien. The tax lien is an exercise of the federal government's "sovereign prerogative"\(^ {133}\) and has priority over state-defined homestead exemption rights. The only limit on lien enforcement is the equitable discretion of the federal courts.

The Court's decision reaffirmed two important objectives of the federal tax collection scheme: uniformity and the prompt and certain collection of taxes.\(^ {134}\) The circuits will no longer be divided, and consequently jurisdiction will no longer be the basis for disparities in protection of property rights. Clearly this is a positive move. Yet serious questions are raised regarding the costs and practical effects of the Rodgers decision.

The basic question before the Court was one of statutory interpretation. Did Congress, in its enactment of section 7403, intend to allow the sale of the entirety of the property in which the delinquent taxpayer holds only a partial interest? The Court answered this question in the affirmative, rejecting the interest limitation of Folsom. The Court so held despite the fact that such an interpretation violates the common law principle of debtor-creditor relations, and the fact that its enforcement would have an impact on interests other than the state-defined property interests of the delinquent taxpayer. Such a far-reaching measure might not have been necessary.

Despite the fact that the delinquent taxpayer did not possess a property right to sell the homestead, the IRS, in its sovereign prerogative, may now enforce its creditor's right to force sale. The case law requiring federal deference to state-defined property laws has been reduced to rhetoric.\(^ {135}\)

The post-Rodgers status of the law in this area is difficult to

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132. See supra note 10 and accompanying text.
133. Rodgers, 461 U.S. at 697. See infra text accompanying notes 161-71.
134. See supra note 17.
135. See supra note 2 and accompanying text.
Serious questions are raised by the Rodgers decision: the degree of state involvement, the remainder of the homestead exemption laws, the completeness of the compensation to third parties, and the standing of the IRS as a sovereign creditor.

A. Remaining State Law Involvement

In 1960 the United States Supreme Court ruled that federal courts, including the Supreme Court, must look to state law to determine the property rights against which the IRS can attach tax consequences. Presumably, the IRS enforcement power is limited by the property rights granted by state law.

The Rodgers decision implicitly questions this limitation. Despite the fact that the delinquent taxpayer could not sell the homestead without the consent of the other interest holder, the creditor rights of the IRS were allowed to extend beyond the property interest of the delinquent taxpayer to allow forced sale of the entire property.

What remains of state involvement in the tax enforcement system? Rodgers leaves the impression that the role of the state is simply to identify the property interests of the taxpayer. The IRS enforcement mechanism then steps in to force sale, stretching or ignoring state-defined property interest limitations.

B. Homestead Exemption Laws

Although important objectives of federal tax collection were realized in Rodgers, important objectives of state homestead exemptions were lost. Homestead exemptions were designed to preclude seizure and forced sale of the homestead property. These


Although Lore and Goldstein, supra maintain that the Rodgers decision merely concerns priority, McKenney, supra, has gone so far as to say that it rewrites joint property law and creates substantial title-clouding problems. The first seems overly restrictive and the second plausible. While the Rodgers decision did involve questions of priority, its effect will carry beyond priority issues alone.


138. 40 C.J.S. Homesteads § 2 (1944) ("[t]hese laws are based on the theory that the preservation of the homestead is of greater importance than the payment of debts. . . .").
exemptions carry with them policy considerations, including promotion of state stability and welfare through preservation of homes where families may be sheltered "beyond the reach of economic misfortune,"139 and protection of society from the danger of its citizens becoming paupers . . . .140 Homestead exemptions are founded not upon principles of equity, but rather upon principles protecting the interests of humanity.141

The Rodgers decision thwarted, if not destroyed, these crucial objectives of the homestead exemption in this context. The policy favoring prompt collection of delinquent taxes is furthered at a high cost. The framers of the Texas Constitution sought to protect surviving spouses from economic misfortune by providing for a homestead interest roughly equivalent to that of a life estate.142 This homestead was to be beyond the reach of most creditors.143 Although the homestead exemption may not have protected delinquent interest-holders from their own tax liability and foreclosure of their interests,144 in many jurisdictions it clearly would have prevented forced sale of the entire homestead. The Supreme Court, in its effort to ensure the prompt and certain collection of taxes, has encroached upon the states' right to define the property rights of its citizens. The security of the protected homestead granted by the Texas Constitution has been effectively destroyed.

C. Complete Compensation?

The Rodgers Court concluded that the unindebted holder of a homestead interest which had been forcibly sold would be completely compensated out of the sale proceeds.145 Using actuarial tables developed to determine the value of a life estate interest, the Court determined that a surviving spouse would be entitled to

139. 40 AM. JUR. 2D Homesteads § 4 (1968).
140. 40 C.J.S. Homesteads § 2 (1944).
141. Id.
142. See, e.g., Williams v. Williams, 569 S.W.2d 867, 869 (Tex. 1978) ("[t]his homestead right of the survivor has been held to be one in the nature of a legal life estate or life estate created by operation of law.").
143. See Rodgers, 461 U.S. at 697.
144. See supra note 10 and accompanying text.
145. Rodgers, 461 U.S. at 680. Early Texas case law describes the homestead exemption as "absolute." See, e.g., In re Mussey, 179 F. 1001 (W.D. Tex. 1910). The Rodgers Court even commented that the "Texas homestead laws are almost absolute in their protections against forced sale." Rodgers, 461 U.S. at 711 (footnote omitted).
as much as ninety-five percent of the sale proceeds. Because innocent third parties are duly compensated for the "taking" by the government, no due process problems will arise.\footnote{Rodgers, 461 U.S. at 680, 697-700.} The Court stated that

the Supremacy Clause—which provides the underpinning for the Federal Government’s right to sweep aside state-created exemptions in the first place—is as potent in its application to innocent bystanders as in its application to delinquent debtors. . . . Whatever property rights attach to a homestead under Texas law are adequately discharged by the payment of compensation, and no further deference to state law is required, either by § 7403 or by the Constitution.\footnote{Id. at 701 (footnote omitted) (emphasis added).}

The Court realized that "innocent bystanders" were involved. The decision, however, legitimizes the forced sale of an unindebted individual’s home through enforcement of creditors’ rights against the indebted individual. The Court, acknowledging the fact that post-sale monetary compensation would be insufficient in certain situations, left it to the district courts to prevent injustice, instructing them to apply this discretion narrowly—making sale the rule and not the exception.\footnote{Id. at 711 ("the limited discretion accorded by § 7403 should be exercised vigorously and sparingly, keeping in mind the Government’s paramount interest in prompt and certain collection of delinquent taxes").}

The Court’s notion that the unindebted spouse will be "completely compensated" out of the proceeds of the sale is illusory. The fact is, anything less than 100% of the homestead’s fair market value (or replacement value) will not be adequate economic compensation. Furthermore, the sentimental value of the homestead may never be replaced. Prior to the forced sale, the unindebted spouse had an interest in a home, equivalent to a life estate under state law. The interest holder was effectively assured a home for life and could not lose this interest unless he or she conveyed the property, abandoned the homestead, or failed to pay the property taxes. After the forced sale, however, the individual is left with only monetary compensation. Although this compensation may be a significant amount, it will not replace the security and stability of a life interest in a family home. This compensation is in fact incomplete.\footnote{See supra text accompanying notes 25-30.}
D. Implications of Rodgers on Debtor-Creditor Relations

The dissent correctly stressed the common law principle that a lienholder cannot enforce its rights against an individual so as to place himself in a better position than the debtor occupied prior to enforcement. The Rodgers majority viewed its holding as consistent with this principle, distinguishing between the right to collect, and the right to force sale. Although Mrs. Rodgers' homestead could be sold, the government could not collect the proceeds from sale of her interest in the property. The relevance of this distinction is far from obvious. The logic of the interest limitation has been stretched to the point of ridiculousness. Since the delinquent taxpayers could not have sold the homestead without the consent of their spouses, the IRS—as a creditor stepping into the shoes of the debtor—should not be permitted to sell without consent either.

E. Effect of Rodgers on Tenancies-by-the-Entirety

One of the most problematic aspects of Rodgers is the legitimization of the IRS's power to enforce its creditor's rights beyond those held by the indebted taxpayer. The scope of this legitimization may well affect other interests similar to the homestead interest, such as the tenancy-by-the-entirety. Like the homestead interest holder, a tenant-by-the-entirety cannot convey the property without the consent of other interest holders. If the IRS can force the unconsented sale despite the inability of the delinquent to do so in the homestead context, there is little reason to believe that it could not do so in the tenancy-by-the-entirety context as well.

The Rodgers decision may create significant "title problems" for a husband and wife who own property as tenants-by-the-entirety, since title companies may no longer be willing to provide title or mortgage insurance fearing the possibility of forced sale of the property. This conclusion is based upon the pre-Rodgers

150. The Court stated "[w]e agree with the Court of Appeals that the Government's lien under § 6321 cannot extend beyond the property interests held by the delinquent taxpayer." Rodgers, 461 U.S. at 690-91 (footnote omitted).
151. See supra notes 20-24 and accompanying text.
152. See R. Powell & P. Rohan, supra note 126, at ¶¶ 618, 620, and 623.
153. Cole v. Cardoza, 441 F.2d 1337, 1343 (6th Cir. 1971); see also McKenney, supra note 136, at 639.
Michigan rule that tenants-by-the-entirety could deliver clear title to a purchaser despite the fact that one spouse was indebted to the federal government for taxes. This rule was set forth in *Cole v. Cardoza*, where the Court of Appeals for the Sixth Circuit held that tenants-by-the-entirety hold under a single title. Neither spouse alone has the power to alienate the estate or any other interest therein. This characteristic makes the tenancy-by-the-entirety similar to the homestead/life-estate interest. The court further held that "neither the land nor the rents and profits therefrom are subject to levy or execution for the sole debts of the husband." If the *Rodgers* case applies to tenancies-by-the-entirety, its impact may extend significantly beyond the state of Texas and the eight other community property states. A strong argument can be made that *Rodgers* does apply to tenancy-by-the-entirety situations. As Justice Blackmun pointed out in his dissent, homestead and tenancy-by-the-entirety interests are similar in a fundamental way. In both cases, a fractional-interest holder cannot force partition of the entirety of the premises. Application of the *Rodgers* rule to tenancies-by-the-entirety will, in effect, rewrite a substantial portion of state property law pertaining to these interests.

Over twenty years ago, in *United States v. Brosnan*, the Court adopted state law definitions within the federal tax collection scheme because it believed that "the need for uniformity... is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures." The *Rodgers* decision may result in just such a dislocation of well settled state-defined property relationships.

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154. 441 F.2d 1337 (6th Cir. 1971).
155. Id. at 1343 (emphasis added).
156. The eight community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. See R. Powell & P. Rohan, supra note 126, §§ 625-630.
158. Id. at 715-16.
160. Id. at 242. See supra note 42 and accompanying text.
F. Implications of Rodgers on the Status of the IRS as a "Sovereign" Creditor

One of the most important aspects of the Rodgers decision is its further elevation of the IRS's status above that of other creditors. The Rodgers majority stated: "[T]he use of the power granted by § 7403 is not the act of an ordinary creditor, but the exercise of a sovereign prerogative, incident to the power to enforce the obligations of the delinquent taxpayer himself, and ultimately grounded in the constitutional mandate to 'lay and collect taxes.'" 161 This statement has the potential to strengthen the IRS's position in comparison to other creditors competing for the same property. The actual impact of this general statement of IRS "sovereignty" can only be determined by future observation of its interpretation.

In United States v. Whiting Pools, 162 decided only nine days after the Rodgers decision, the Supreme Court had an opportunity to rule on the IRS's standing in relation to other creditors in a bankruptcy proceeding. Justice Blackmun, dissenting in Rodgers, wrote the opinion for a unanimous Court in Whiting Pools.

Whiting Pools, Inc., failed to pay $92,000 in Federal Insurance Contribution Act Taxes. 163 The IRS seized property of Whiting Pools pursuant to section 6331 of the Code, 164 intending to proceed with a tax sale. 165 The day after the seizure, Whiting Pools filed a chapter eleven bankruptcy petition in the United States Bankruptcy Court for the Western District of New York. The IRS moved "for a declaration that the automatic stay provision of the Bankruptcy Code, § 362(a), was inapplicable to the IRS or, in the alternative, for relief from the stay." 166 Applying section 542(a) of the Bankruptcy Reform Act, 167 the bankruptcy court ordered the IRS to turn over the seized property to the trustee. The IRS appealed. The district court reversed, holding that the turnover order was not authorized. The court of appeals,

161. Rodgers, 461 U.S. at 697 (footnote omitted) (emphasis added).
163. Id. at 199-200.
reversing the district court, held that the turnover order was, in fact, authorized under section 542(a). The Supreme Court affirmed, stating: "We see no reason why a different result should obtain when the IRS is the creditor. The Service is bound by § 542(a) to the same extent as any other secured creditor." By refusing to grant the IRS special rights beyond that of any other secured creditor, the Court restricted the troublesome Rodgers language which describes the IRS as a creditor with "sovereign prerogative."

In In re Levenhar, the United States Bankruptcy Court for the Eastern District of New York relied upon the Rodgers dictum to stress the fact that a spouse who jointly owns property may be entitled to as much as ninety-five percent of the sale proceeds. The court held that the trustee had not established that sale of the estate's undivided interest would realize significantly less than sale of the estate free of the wife's interest. Rodgers was relied upon to support the premise that the nonfiling spouse's interest in the property should not be assumed to be only fifty percent, but might be as high as ninety-five percent.

In United States v. Pilla, the Court of Appeals for the Eighth Circuit ruled on a case very similar to Rodgers. Mr. Pilla was indebted for failure to pay federal withholding taxes on his business. The IRS initiated an action under section 7403 attempting to force the sale of the Pilla home. Mrs. Pilla, who was not indebted to the IRS, raised the Minnesota homestead exemption as a defense to the forced sale. The court remanded the case to determine several questions: the precise nature of the homestead exemption right; whether equitable discretion should be applied; and the portion of the sale proceeds to which Mrs. Pilla would be entitled if equitable discretion were not applied.

The Pilla court expressly relied upon the Rodgers rule that state homestead exemptions cannot operate to preclude sale. The remand was solely for the purposes of determining adequate compensation to avoid due process difficulties. The court also relied

170. 30 Bankr. 976 (E.D.N.Y. 1983).
171. 711 F.2d 94 (8th Cir. 1983).
upon the strong language of Rodgers regarding the status of the IRS as a creditor stating: "The [Rodgers] Court pointed out that the IRS has rights superior to those of an ‘ordinary creditor,’ since it is not acting as an ordinary creditor, but rather is exercising ‘a sovereign prerogative’ . . . ultimately grounded in the constitutional mandate to ‘lay and collect taxes.’"  

It is unclear what the status of the IRS as a “sovereign” creditor will be following Rodgers. Despite the language in Whiting Pools indicating the IRS’s standing as an ordinary secured creditor in the bankruptcy setting, the Pilla court expressly relied upon the strong sovereignty language of Rodgers. Consequently, it is difficult to predict the exact impact of the Rodgers decision on the IRS’s standing as a creditor. Nevertheless, it is clear that its standing is significantly bolstered by the Rodgers decision.

**Conclusion**

The Rodgers decision clearly establishes the priority of the federal tax lien over state-defined homestead exemptions. In its efforts to realize the goal of prompt and certain collection of taxes, the Court overlooked fundamental principles of debtor-creditor relations, established state powers, and goals of the homestead exemptions. The federal government is now permitted to enforce its lien against a delinquent taxpayer and place itself in a better position than the taxpayer enjoyed prior to enforcement. This is clearly contrary to the common law of debtor-creditor relations. Texas had clearly established that one spouse could not force sale of the homestead property without the consent of the other. Since Rodgers, the government may enforce its lien against one spouse and, through the exercise of “sovereign prerogative,” force sale of the entirety of the homestead property.

The broad holding of the Court could easily carry over to tenancies-by-the-entirety. Well-settled state law is redefined by the Court’s holding. A complex set of property rights and relations is disturbed by the Court’s effort to promptly collect delinquent taxes, despite the fact that it is unclear whether the government’s interest would in fact be injured by delayed enforcement.

The Court’s decision overrides the efforts of the framers of the Texas homestead exemption to protect the family homesteads

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172. Id. at 96 (quoting Rodgers, 461 U.S. at 697).
of its citizens from the reach of creditors. Amidst the shuffle, the
unindebted spouse loses the security of a "life estate" in the fam-
ily homestead and is left with incomplete monetary compensation.

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