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**From:**

**Sent:** Monday, November 22, 2010 4:31:03 PM

**To:**

**Cc:**

**Subject:** [ ]

Hi

In response to your e-mail below [REDACTED]. A levy under I.R.C. § 6331 may be issued (after the 10 day notice and demand period) against (1) property subject to a lien or (2) property of a person liable for the tax.

A lien under I.R.C. § 6321 arises on all taxpayer's property after the tax assessment. I.R.C. § 6322. A lien attaches to all property belonging to the taxpayer at the time of assessment and any property acquire after assessment while the lien is still in place. If the taxpayer has disposed of property before the assessment, the lien does not attach to the disposed property. The [REDACTED] donation was made before assessment; the [REDACTED] donation took place before a section 6321 lien arose on taxpayer's property. Therefore, a lien did not attach to the donated funds (if you argue that the funds were the taxpayer's property). Since the donation funds were not covered by a lien, we cannot utilize that basis to issue a section 6331 levy against the [REDACTED].

In addition, we cannot base a section 6331 levy on the fact the donated funds were the taxpayer's property, because arguably, once the taxpayer gave the funds to the [REDACTED], the funds were no longer his property. Upon donation, the funds became the [REDACTED] property.

[REDACTED]

[REDACTED]

Generally, a constructive trust arises against a party, who, by actual or constructive fraud or questionable means, has obtained or holds the legal right to property which in the interest of equity he should not hold. The United States has asserted a constructive trust theory in cases to recover tax monies. See, e.g., *LiButti v. United States*, 107 F.3d 110 (2d Cir. 1997) (beneficiary of a constructive trust can follow funds wherever they can be traced); *United States v. Snyder*, 233 F.Supp.2d 293 (D.Conn. 2002) (imposition of a constructive trust can be an appropriate remedy where property was fraudulently conveyed); *Alioto v. United States*, 593 F.Supp. 1402 (N.D. Cal. 1984) (IRS sought constructive trust against amounts paid by taxpayer to law firm); *United States v. Augspurger*, 452 F.Supp. 659 (W.D.N.Y. 1978), *motion for reconsideration denied*, 477 F.Supp. 94 (W.D.N.Y. 1979) (constructive trust in favor of the United States resulted from erroneous refund).

[REDACTED]