By Jason S. Brookner and Amber M. Carson

Further Reflections on Using the Tax Code's Extended Period for Avoidance Under § 544(b)

Jason S. Brookner
Gray Reed & McGraw LLP; Dallas

Amber M. Carson
Gray Reed & McGraw LLP; Dallas

Jason Brookner, a partner at Gray Reed & McGraw LLP in Dallas, chairs the firm's Corporate Restructuring and Bankruptcy Department and is a member of ABI's Board of Directors. Amber Carson, an associate in the same office, will be a partner starting Jan. 1, 2023, and is Membership Relations Director of ABI's Young and New Members Committee.

Section 544(b) of the Bankruptcy Code permits a trustee to use "applicable law" to avoid potentially fraudulent transfers. Historically, § 544(b) has been an avenue by which trustees may use state law and its accompanying, usually longer, statute of limitations (or repose) to avoid fraudulent transfers: Section 548 allows a trustee to attempt to recover transfers made two years before the petition date,[1] whereas most state laws allow plaintiffs and, in bankruptcy, trustees to go back four or occasionally six years to avoid transfers.[2] However, is there other "applicable law" trustees may use to avoid transfers that occurred even further back in time? There is, and this article addresses one such "applicable law": the Internal Revenue Code (the "Tax Code"), which,[3] outside of bankruptcy, provides the Internal Revenue Service (IRS) with a 10-year period within which to collect taxes.[4]

Courts that have addressed the issue nearly unanimously hold that the Tax Code constitutes "applicable law" under § 544(b) of the Bankruptcy Code.[5] This permits trustees — in circumstances where the IRS is an unsecured creditor — to use the IRS as the "golden" creditor to take advantage of the Tax Code's 10-year collections (a.k.a., limitations) period. However, the practical application of using the IRS as the "golden" creditor may widely vary, largely due to a few potential misunderstandings of, and uncertainties in, the Tax Code.[6] This article discusses some of these issues on a high level. Realistically, an entire law review article could easily be written about this area of the law.

When Is a Lookback Not a Lookback?

Making heads or tails of the Tax Code when a trustee is standing in the IRS's shoes is not always an easy feat. Presumably because the term "lookback" is typically used when restructuring professionals discuss limitations periods for fraudulent-transfer claims under § 548 of the Bankruptcy Code, state law and the Federal Debt Collection Practices Act (FDCPA),[7] courts and practitioners alike have used the same term when discussing the 10-year IRS collection period found in § 6502 of the Tax Code. A variety of courts seem to assume that the IRS limitations period translates into a 10-year "lookback" period, potentially allowing the avoidance of fraudulent transfers made within a decade of the petition date.[8]

However, every court to have directly analyzed the issue has instead held that § 6502 of the Tax Code does not operate as a "lookback" period; rather, § 6502 is a forward-looking limitations or collection period.[9] Unlike other federal or state fraudulent-transfer laws where the relevant date is the petition date, the relevant date for purposes of § 6502 is the date that the tax is assessed:

> Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, *but only if the levy is made*

1 11 U.S.C. § 548(a)(1) ("The trustee may avoid any transfer ... of an interest of the debtor in property, or any obligation ... incurred by the debtor, that was made or incurred on or within [two] years before the date of the filing of the petition.").

2 For example, the Texas Uniform Fraudulent Transfer Act provides for a four-year period. Tex. Bus. & Com. Code § 24.010. New York used to provide for a six-year period, but when its fraudulent-transfer laws were amended, the period was reduced to four years. N.Y. Debt. & Cred. Law § 278 (McKinney) (superseding N.Y. C.P.L.R. § 213).

3 26 U.S.C. § 1, *et seq.*

4 26 U.S.C. § 6502(a)(1).

5 The only court that has held that a trustee cannot use the 10-year limitations period found in the Tax Code is *Wagner v. Ultima Holmes Inc. (In re Vaughan Co.)*, 498 B.R. 297, 304-06 (Bankr. D.N.M. 2013) (holding that IRS immunity from state statutes of limitations is a public right that cannot be invoked by bankruptcy trustee under § 544(b) in pursuit of her private interests). For a discussion of the determinations behind allowing the IRS to serve as the "golden" creditor, *see* Peter Russin & Meaghan Murphy, "An Unlimited Reach-Back Period When IRS Is Triggering Creditor?," XXXVI *ABI Journal* 1, 22-23, 69-70, January 2017, *available at* abi.org/abi-journal (unless otherwise specified, all links in this article were last visited on Aug. 29, 2022).

6 Chapter 11 debtors-in-possession have the powers of a trustee pursuant to 11 U.S.C. § 1107(a). References to the "trustee" herein thus apply equally to debtors in possession.

7 28 U.S.C. §§ 3301-08.

8 *See, e.g., In re Polichuk*, No. 10-0031ELF, 2010 WL 4878789, at *3 n.9 (Bankr. E.D. Pa. Nov. 23, 2010) ("The IRS has at least a ten-year lookback period.... Because the Trustee may step into the shoes of the IRS, she may seek to avoid transfers that occurred as far back as [10 years prior to the petition date]."); *Finkel v. Polichuk (In re Polichuk)*, 506 B.R. 405, 420 (Bankr. E.D. Pa. 2014) (same); *In re Vaughan Co.*, 498 B.R. at 302 (referencing "ten-year look-back period available to the IRS"); *Mitchell v. Zagaroli (In re Zagaroli)*, No. AP 20-05000, 2020 WL 6495156, at *1 (Bankr. W.D.N.C. Nov. 3, 2020) ("26 U.S.C. § 6502 of the Internal Revenue Code ("IRC") provides an extended look back period of ten years to avoid transfers.").

9 *See, e.g., Gordon v. Webster (In re Webster)*, 629 B.R. 654, 676 (Bankr. N.D. Ga. 2021) ("Considering the focus on assessment in case law and the statutory text, the Court cannot find that § 6502 operates to avoid transfers up to ten years prior to the petition irrespective of the status of tax liability or assessment."); *Gordon v. Harrison (In re Alpha Protective Servs. Inc.)*, 531 B.R. 889, 908 (Bankr. M.D. Ga. 2015) ("Section 6502(a)(1) provides a 'limitation period,' rather than a 'reach back period....'"); *Luria v. Thunderflower LLC (In re Taylor, Bean & Whitaker Mortg. Corp.)*, No. 3:09-BK-07047-JAF, 2018 WL 6721987, at *6 (Bankr. M.D. Fla. Sept. 28, 2018) ("[The] Plaintiff's argument implies that any transfers made within ten years before the Petition Date are potentially avoidable when stepping into the shoes of the IRS ... however, the ten-year period appears to be a look-forward period rather than a lookback period."); *cf., Hillen v. City of Many Trees LLC (In re CVAH Inc.)*, 570 B.R. 816, 838 n.19 (Bankr. D. Idaho 2017) (expressing "concern at how this 10-year period translates into a 'look-back' period, since it is measured from the date of an assessment rather than the date of the transfer").

or the proceeding begun — (1) within 10 years after the assessment of the tax.[10]

Since the IRS's 10-year limitations period begins running from the date of *tax assessment*, the IRS may, but does not always, have 10 years prior to a debtor's bankruptcy filing to attempt to recover avoidable transfers. The IRS — and, hence, the trustee standing in the IRS's shoes — may have less time, or potentially even more time, as discussed further herein.

Section 544(b) Permits Trustee to Step into Shoes of a "Golden" Creditor to Avoid Fraudulent Transfers

Section 544(b) of the Bankruptcy Code provides that a trustee "may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is *voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502* of this title or that is not allowable only under section 502(e) of this title."[11] The unnamed unsecured creditor referenced in § 544(b) is often referred to as the "golden" or "triggering" creditor.[12]

The purpose of § 544(b) is simple: If, outside of bankruptcy, a creditor could avoid a transfer of a debtor's property to the extent of the creditor's claim, that avenue of recovery should not be cut off by a pending bankruptcy proceeding.[13] Rather, the trustee is vested with the power of that creditor and may pursue avoidance of the entire transfer (not just the amount attributable to the "golden" creditor's claim) for the benefit of all the debtor's creditors.[14]

The IRS is often an unsecured creditor with an allowable claim within the meaning of § 544 and in such case may serve as the "golden" creditor.[15] This opens the door for a trustee to utilize the 10-year limitations period in the Tax Code rather than shorter state statutes of limitations or repose.[16] However, to avoid an allegedly fraudulent transfer, the trustee must still meet the factors for avoidance under "applicable" state or federal law, as the Tax Code does not itself provide the substantive means by which fraudulent transfers may be avoided.[17]

But determining whether the IRS could have avoided a particular transfer as of the petition date is more complicated than the similar inquiry for a non-governmental creditor. This is because in addition to looking at the "standard" factors found in the relevant applicable law for actual or constructive fraudulent-transfer conveyances, there must also be a determination as to whether there has been a tax assessment. If a tax has in fact been assessed, the inquiry continues to review (1) when the assessment was completed and, correspondingly, when the IRS limitations period begins and ends; (2) the tax year(s) subject to the assessment; (3) when the tax liability accrued; and (4) when allegedly fraudulent transfers were made in relation to the accrual of tax liability. Only after those determinations have been made does the question become whether the relevant fraudulent-transfer law(s) permit avoidance of the transfer(s) in question.

The IRS Limitations Period and the Necessity of a Tax Assessment Prior to Collection

Section 6501(a) of the Tax Code generally gives the IRS three years after a tax return has been filed to assess the applicable taxes against the taxpayer.[18] After a tax has been assessed, the IRS generally has 10 years to collect the tax from the taxpayer or a transferee of the taxpayer's property.[19] The exhibit on p. 50 provides a visual representation of the assessment and collection process.

Calculating the length of the IRS limitations period is relatively straightforward. Assume, outside of bankruptcy, that the IRS assesses a tax in March 2020 for tax year 2019. The IRS then has 10 years following the assessment (until March 2030) to collect the tax, including initiating a suit against transferees of the taxpayer's property to recover allegedly fraudulent transfers to apply to the 2019 tax debt. However, if the IRS uses the full three-year assessment period contained in § 6501(a) of the Tax Code and does not assess the 2019 tax until December 2022, the IRS would

10 26 U.S.C. § 6502(a)(1) (emphasis added). It is "the 'assessment' itself that, once made, starts the running of the ten-year period within which the IRS can commence efforts to *collect* an assessed tax." *Remington v. United States*, 210 F.3d 281, 284 (5th Cir. 2000) (emphasis in original); *cf., United States v. Galletti*, 541 U.S. 114, 119 (2004) (citing 26 U.S.C. § 6502).

11 11 U.S.C. § 544(b) (emphasis added). For further discussion related to the "applicable law" determination and other helpful considerations, *see* Matthew T. Christensen & Chad R. Moody, "When Tax Claims Can Tip the Scales: Expanding the Look-Back Period on Fraudulent-Transfer Claims," XXXVII *ABI Journal* 3, 14, 67-68, March 2018, *available at* abi.org/abi-journal.

12 *See, e.g., Ebner v. Kaiser (In re Kaiser)*, 525 B.R. 697, 703 (Bankr. N.D. Ill. 2014); *see also* 5 *Collier on Bankruptcy* ¶ 544.06[1] (Richard Levin & Henry J. Sommer eds., 16th ed.).

13 *See In re CVAH Inc.*, 570 B.R. at 824 n.6.

14 *See id.*; *G-I Holdings Inc. v. Those Parties Listed on Exhibit A (In re G-I Holdings Inc.)*, 313 B.R. 612, 633 (Bankr. D.N.J. 2004); *see also Moore v. Bay*, 284 U.S. 4 (1931); Emil A. Kleinhaus, "Let's Rethink *Moore v. Bay*," XXXIV *ABI Journal* 9, 28-29, 78, September 2015, *available at* abi.org/abi-journal.

15 There is some debate as to whether a claim may be "allowable" if a proof of claim has not been filed pursuant to § 501 or 1111(a) of the Bankruptcy Code. *Compare Miller v. Fallas (In re J&M Sales Inc.)*, No. 20-50775, 2022 WL 532721, at *3 (Bankr. D. Del. Feb. 22, 2022) (holding that claim is only allowable for purposes of § 544(b) if there is "a proof of claim filed as required by Section 502" and citing cases), *Levey v. Gillman (In re Republic Windows & Doors LLC)*, No. 10-2513, 2011 WL 5975256, at *10 (Bankr. N.D. Ill. Oct. 17, 2011) ("[U]ntil the IRS files a claim and [has] it become allowable as required by section 544(b), the Trustee cannot rely on the IRS's ten-year limitations period."), *and In re Kaiser*, 525 B.R. at 714 ("[I]n order for a claim to be allowable under section 502, a proof of claim must be filed."), *with Finkel v. Polichuk (In re Polichuk)*, 506 B.R. at 426-32 (permitting IRS to serve as "golden" creditor even though proof of claim was not filed, because debtor may nonetheless be liable for taxes due to IRS and IRS may file a claim even though bar date had passed), *and In re G-I Holdings Inc.*, 313 B.R. at 636 (holding that governmental agency had potential allowable claim when bar date for filing proofs of claim had not yet been determined).

16 *See, e.g., In re Kaiser*, 525 B.R. at 710 ("[I]n pursuing collection by way of transferee liability, the IRS is subject to the limitations periods set out in the Internal Revenue Code, not the statute of limitations set forth in the state fraudulent-transfers law." (citations omitted)); *see also United States v. Summerlin*, 310 U.S. 414, 416-17 (1940) ("[T]he United States government is not bound by state statutes of limitation[s]...."); *United States v. Nemecek*, 79 F. Supp. 2d 821, 824 (N.D. Ohio 1999) (citing cases).

17 *See, e.g., In re Kaiser*, 525 B.R. at 709; *Mukamal v. Citibank NA (In re Kipnis)*, 555 B.R. 877, 880-81 (Bankr. S.D. Fla. 2016). Two courts have held that the trustee may not use the FDCPA as "applicable law." *See MC Asset Recovery LLC v. Commerzbank AG (In re Mirant Corp.)*, 675 F.3d 530, 536 (5th Cir. 2012); *MC Asset Recovery LLC v. S. Co.*, No. 1:06-CV-0417-BBM, 2008 WL 8832805, at *3-5 (N.D. Ga. July 7, 2008). Notably, these two opinions rely on legislative history specific to the FDCPA and specific language found in the FDCPA that is not found in the Tax Code or state fraudulent transfer law. Accordingly, it appears that a trustee utilizing the IRS as the "golden" creditor and its corresponding 10-year limitations period remains viable in these jurisdictions, as long as the FDCPA is not relied upon as the "applicable law."

18 "[T]he amount of any tax imposed by this title shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed)." 26 U.S.C. § 6501(a). This section of the Tax Code relates to the assessment against the *taxpayer*. Separately, 26 U.S.C. § 6901(c) relates to assessment against a transferee of a taxpayer's property and appears to be unnecessary to the initiation of a fraudulent-transfer action. *See In re CVAH*, 570 B.R. at 832; *United States v. Henco Holding Corp.*, 985 F.3d 1290, 1300, 1305 (11th Cir. 2021); *cf., Internal Review Manual* 34.6.2.3 [hereinafter, *IRM*] (describing three alternate methods for establishing transferee liability, including commencing an avoidance action, commencing a lawsuit directly against a transferee, or assessing liability against a transferee).

19 *See* 26 U.S.C. § 6502(a)(1). Tax liabilities against transferees shall "be assessed, paid, and collected in the same manner and subject to the same provisions and limitations" as those applicable to taxpayers. 26 U.S.C. § 6901(a)(1)(A). For further discussion of the IRS limitations periods, *see* Paul A. Avron, "Is the IRS Truly the Triggering 'Golden Creditor' for Statute-of-Limitations Purposes for Trustees?," XXXVIII *ABI Journal* 4, 44-45, April 2019, *available at* abi.org/abi-journal.

continued on page 50

from page 15

have until December 2032 — 10 years after the assessment, but 13 years after the applicable tax year — to collect the 2019 tax. Moreover, the period could be longer, and perhaps open-ended. For example, if a taxpayer never files a tax return, there is no statute of limitations for tax assessment with respect to the unfiled year.[20] The implications of an indefinite period for assessment are unclear. However, because assessment is tied to collection, the potential for an open-ended collections period has caused some courts to lament the application of these rules.[21]

Timing of Accrual of Tax Liability May Prove Dispositive

Tax assessments record the taxpayer's liability for specific tax years, but do not themselves give rise to tax liability. Several courts have held that a tax claim generally arises at the end of the taxable year, not at the time of assessment.[22] For example, in *Hillen v. City of Many Trees LLC (In re CVAH Inc.)*, the court found that the IRS held a claim on Jan. 1, 2010, "at the latest," when taxes were owed for the 2009 tax year.[23] The *Internal Review Manual* (*IRM*) affirms this conclusion[24] but also explains that "a transfer occurring during the tax year may give rise to a contingent tax liability at the time of the transfer."[25] Thus, a viable argument could be made that tax liability accrued in (not just after) a year for which taxes are owed.

The timing of tax liability accrual compared to the timing of an allegedly fraudulent transfer will dictate avoidability both inside and outside of bankruptcy. In some cases outside of bankruptcy (which would also apply in bankruptcy), fraudulent transfers can potentially be avoided regardless of whether they occur after, or before, the accrual of tax liability. Such determination is dictated by the relevant "applicable law."[26] Most state fraudulent transfer laws and the FDCPA limit the avoidance of constructively fraudulent transfers to creditors who hold a claim against the debtor/transferor at the time of the transfer but allow the avoidance of actually fraudulent transfers by both current and future creditors.[27] Therefore, this may provide yet another basis for a trustee to recover transfers made long before a bankruptcy filing.

Potential Defenses

All is not lost for potential defendants, however. For example, if the IRS has not completed a tax assessment,

20 26 U.S.C. § 6501(c); *see also In re Kaiser*, 525 B.R. at 710 n.10 (noting that for fraudulent tax returns or failure to file tax returns, there is "potential for open-ended liability"). However, if a tax return has not been filed by the petition date, the automatic stay should prevent the IRS from assessing a tax post-petition. *See generally* 11 U.S.C. § 362(a).

21 *See, e.g., Williamson v. Smith (In re Smith)*, No. 19-40964, 2022 WL 1814415, at *1 (Bankr. D. Kan. June 2, 2022) ("[T]his Court shares the policy concerns addressed by *Vaughan*. This is not a rare situation. Unsecured tax claims exist in many cases. The plain language of § 544(b) permits an extension of avoidance actions in a manner most likely not contemplated by the drafters. One result is an uneven playing field for transferees. Only in those cases where there are tax claims may perfectly valid estate planning transactions made in good faith more than four years pre-petition be challenged and set aside. The extended look-back period is an invitation to commence litigation about long forgotten transactions. Unfortunately, under current standards of statutory construction the Court is constrained to interpreting the plain language of § 544 without regard to these adverse consequences."); *In re Vaughan Co.*, 498 B.R. at 305–06 ("If a bankruptcy trustee or debtor-in-possession could recover transfers made within [10] years before the petition date, it would eviscerate the UFTA's four-year look back period in most bankruptcy cases." (citations omitted)). *But see Alberts v. HCA Inc. (In re Greater Se. Cmty. Hosp. Corp. I)*, 365 B.R. 293, 305 (Bankr. D.D.C. 2006) ("There is no great injustice in allowing [the U.S. Department of Health and Human Services] or the IRS to have a fraudulent transfer claim under the IUFTA without a set statute of limitations."); *In re CVAH Inc.*, 570 B.R. at 838-39 ("[T]he Court declines to conclude that it was absurd for Congress to empower [the] IRS to recover transfers from a taxpayer occurring long ago as a way to increase the agency's ability to collect unpaid taxes. It is no less absurd that Congress would have similar sympathies for those trustees tasked with attempting to recover such transfers under § 544(b)(1) to satisfy the claims of IRS in bankruptcy cases.").

22 *See, e.g., In re Polichuk*, 506 B.R. at 427; *In re CVAH Inc.*, 570 B.R. at 841 (explaining that IRS held claim as of "the conclusion of the earliest taxable year pled"). However, different types of taxes may be incurred at different times. *See In re Greater Se. Cmty. Hosp. Corp. I*, 365 B.R. at 308 (stating that IRS "held a contingent claim" for employment taxes against debtor "as soon as its employees performed work for which they were entitled to a wage").

23 570 B.R. at 841.

24 The *IRM* is a set of published guidelines to help taxpayers, agents and examiners understand IRS procedures. Although the *IRM* may provide helpful guidance, it does not have the force of law.

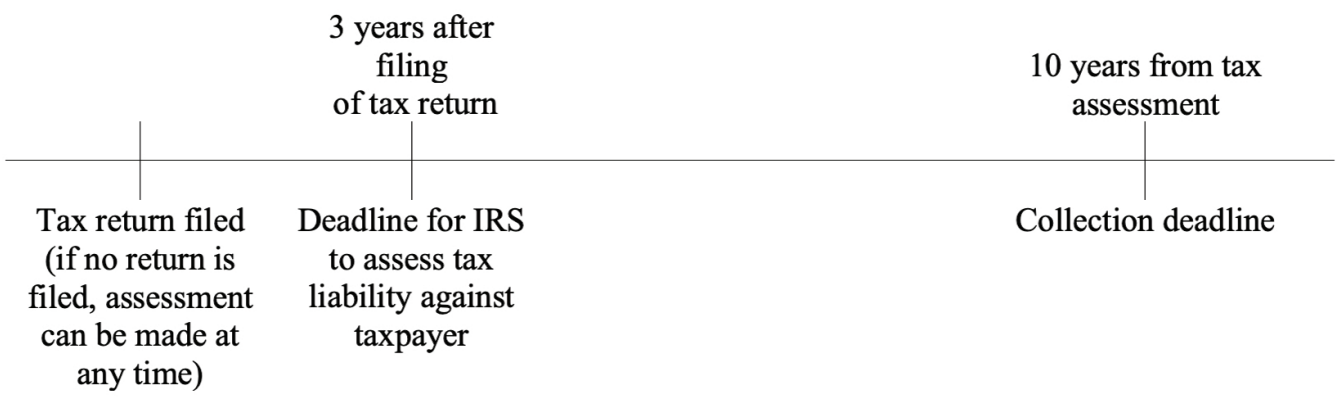
25 *IRM* 5.17.14.3.3(6), *available at* irs.gov/irm/part5/irm_05-017-014.

26 *See In re CVAH*, 570 B.R. at 843 ("[W]hether a creditor needed to be in existence at the time of the transfer or not depends on the 'applicable law.'").

27 For example, Idaho fraudulent-transfer law and the FDCPA, both of which were at issue in *In re CVAH*, allow the avoidance of actually fraudulent transfers regardless of whether the creditor's claim or the debt to the U.S. arose before or after the transfer was made. 570 B.R. at 843 (citing Idaho Code § 55-913 and 28 U.S.C. § 3304); *see also, e.g.*, Tex. Bus. & Com. Code §§ 24.005, 24.006; N.Y. Debt. & Cred. Law §§ 273, 274.

28 *See* 26 U.S.C. § 6502(a) ("Where the assessment of any tax ... has been made ... such tax may be collected by levy or by a proceeding in court."); 26 U.S.C. § 6501(a) ("[N]o proceeding in court without assessment for the collection of [tax for which a return was filed] shall be begun after the expiration of [the three-year assessment] period."); *In re Kaiser*, 525 B.R. at 710 ("The process by which the IRS may collect taxes against the transferee of property of the taxpayer is first assessment of tax liability, then collection, both of which are subject to well-specified limitations."); *United States v. Holmes*, 727 F.3d 1230, 1233 (10th Cir. 2013) ("[T]o claim entitlement to the ten-year period of limitations, the government must show that the tax was properly assessed."). *But see* 26 U.S.C. § 6501(c) (permitting IRS to initiate collection proceeding in court without assessment in unusual circumstances, such as where there is (1) false return; (2) willful attempt to evade tax; or (3) no tax return has been filed). Practitioners should be mindful of the distinction between assessment of a taxpayer, which appears to be generally required, and assessment of a transferee, which may not be required.

Exhibit



complications arise for the IRS outside of bankruptcy that trail into a bankruptcy and potentially have negative effects on a trustee trying to step into the IRS's shoes. Outside of bankruptcy, no tax assessment means that the IRS may be precluded from asserting fraudulent-transfer claims against a taxpayer's transferees relating to the unassessed tax.[28] In bankruptcy, even if there is no tax assessment, the IRS may still hold a "claim" against the debtor as defined in § 101 of the Bankruptcy Code, which, in theory, would still allow the trustee to use the IRS as the triggering creditor to pursue fraudulent transfers under § 544(b).[29] However, because the IRS could itself be precluded outside of bankruptcy from pursuing a taxpayer's transferees for fraudulent transfers due to the lack of an assessment, the same logic should apply to a trustee and also preclude the trustee's pursuit of transferees. By the same token, outside of bankruptcy if there is no tax assessment, the 10-year collection/limitations period may not apply.[30] In bankruptcy, that would in theory translate into the trustee being precluded from using the 10-year limitations period altogether.

In most cases, therefore, defending against a trustee's "extended look back" fraudulent-transfer claim may be as simple as reviewing the IRS's filed proof of claim, noting the date of tax assessment and the tax year assessed, and moving to dismiss claims related to transfers occurring prior to accrual of the tax liability. Other defenses may include the following: (1) the IRS's limitations period cannot revive a limitations/repose period that has already lapsed;[31] (2) if taxes were not assessed against the taxpayer, the trustee cannot initiate a fraudulent-transfer suit and/or utilize the 10-year limitations period prior to assessment; or (3) if taxes were not assessed against the transferee within the applicable statutory period after the taxpayer's return was filed,[32] the trustee cannot bring a fraudulent-transfer suit against an unassessed transferee after the time for assessing the liability of such transferee has expired.[33]

Conclusion

The trustee's use of the Tax Code as "applicable law" under § 544(b) continues to be a still evolving and, at times, uncertain and confusing area of the law. There are "[y]ou know, a lotta ins, a lotta outs, a lotta what-have-yous."[34] In addition, the potential defenses to transferee liability listed above are largely untested; only time will tell whether they prove effective. abi

29 *See* further discussion herein; *In re Polichuk*, 506 B.R. at 427; *In re CVAH Inc.*, 570 B.R. at 841.

30 *See Galletti*, 541 U.S. at 119, 123 (determining that tax assessment against partnership was sufficient to apply § 6502's "extended" 10-year statute of limitations to partnership's general partners and describing such "extension" as "consequence" of tax assessment).

31 *See Guar. Tr. Co. of New York v. United States*, 304 U.S. 126, 141 (1938); *In re Greater Se. Cmty. Hosp. Corp. I*, 365 B.R. at 306 ("[A] persuasive case could be made that Guaranty Trust would prevent a governmental creditor from bringing an action under the [state fraudulent-transfer statute] if its claim did not arise until after the four-year statute of repose had passed."). However, this may only make a meaningful difference if the court finds that the trustee's claim arose by operation of § 544(b), rather than at the time liability to the IRS accrued.

32 Section 6901(c)(1) of the Tax Code, in conjunction with 26 U.S.C. § 6501(a), generally provides that the IRS has four years to assess liability against an initial transferee following the filing of a tax return (three years to assess against the taxpayer, and one additional year to assess against the transferee).

33 *See Holmes*, 727 F.3d at 1238 (Tymkovich, dissenting). For further discussion of the *Holmes* opinion and subsequent court analysis of the same, *see* Avron, *supra* n.19.

34 *The Big Lebowski* [film] (1998).