

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART VI - PARTICULAR PROCEEDINGS
CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE
SUBCHAPTER D - FRAUDULENT TRANSFERS INVOLVING DEBTS

§ 3304. Transfer fraudulent as to a debt to the United States

(a) **Debt Arising Before Transfer.**— Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

- (1) (A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and
(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or
- (2) (A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and
(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) **Transfers Without Regard to Date of Judgment.**—

(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

- (A) with actual intent to hinder, delay, or defraud a creditor; or
- (B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—
 - (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

- (A) the transfer or obligation was to an insider;
- (B) the debtor retained possession or control of the property transferred after the transfer;
- (C) the transfer or obligation was disclosed or concealed;
- (D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (E) the transfer was of substantially all the debtor's assets;
- (F) the debtor absconded;
- (G) the debtor removed or concealed assets;
- (H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4961.)