

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Nancy K. Duckett,

Plaintiff,

v.

Dennis M. Enomoto, et al.,

Defendants.

No. CV-14-01771-PHX-NVW

ORDER

At issue is whether the federal tax lien, 26 U.S.C. § 6321, attaches to money held in a discretionary support trust created under Arizona law for the benefit of the delinquent taxpayer. Before the Court are the taxpayer’s and the IRS’ competing motions for summary judgment. (Docs. 89, 91.) For the reasons that follow, the IRS’ motion will be granted in part and denied in part, and the taxpayer’s motion will be denied.

I. BACKGROUND

The following facts are stipulated for present purposes or otherwise undisputed.

In 2004, Miyoko Enomoto (“Ms. Enomoto”) executed a will in Pima County, Arizona. The will divided certain of Ms. Enomoto’s personal property and the residue of her estate into three shares, to be devised to her three children: Dr. Dennis Enomoto (“Dr.

1 Enomoto”), Nancy Duckett, and Joanne Bradley. The will called for Dr. Enomoto, but
2 not Duckett or Bradley, to receive his share via trust:

3 The One-Third share of my Estate, other than tangible personal property,
4 that is to be distributed to my son DENNIS MASAKI ENOMOTO, if such
5 amount should exceed \$50,000, shall be distributed in trust. The Trustee
6 shall pay to DENNIS MASAKI ENOMOTO so much or all of the net
7 income and principal of the trust as in the sole discretion of the Trustee may
8 be required for support in the beneficiary’s accustomed manner of living,
9 for medical, dental, hospital, and nursing expenses, or for reasonable
10 expenses of education, including study at college and graduate levels. Any
11 income not so paid shall be accumulated and added to the principal of such
12 trust at the end of the trust’s tax year. In the Trustee’s sole discretion and
13 to the extent the Trustee deems advisable, the Trustee may consider or
14 disregard the funds available to the beneficiary from other sources or the
15 duty of anyone to support the beneficiary. Should the principal of the trust
16 drop below \$10,000, the Trustee shall distribute the balance of the
17 principal, together with the undistributed income therefrom to DENNIS
18 MASAKI ENOMOTO.

14 Under the terms of the will, Carol Severyn Trust Management Services was named as
15 trustee, but Dr. Enomoto enjoyed “the limited authority to request the removal of the
16 Trustee and appoint a successor Trustee.” Any successor trustee would have to be an
17 Arizona licensed private fiduciary and could not be a member of Dr. Enomoto’s family.
18 The will named Duckett as the personal representative of the estate.

19 According to the Internal Revenue Service (“IRS”), Dr. Enomoto failed to meet
20 his tax obligations in tax years 2007 through 2011. The IRS made assessments totaling
21 \$701,079.11 and sent Dr. Enomoto statutory notices and demand for payment. Dr.
22 Enomoto did not timely pay the full amounts demanded but has made substantial
23 payments since then.

24 Ms. Enomoto passed away in February 2013, and Duckett filed a probate petition
25 in state court the following month. In April 2014, Duckett prepared a final accounting of
26 the estate, to which both Dr. Enomoto and Bradley agreed. That accounting provided, in
27
28

1 relevant part, that the estate would deliver \$173,545.12 to the trustee of the trust created
2 for Dr. Enomoto's benefit.

3 In June 2014, the IRS served on Duckett, in her capacity as personal
4 representative, a Notice of Levy demanding that she turn over any of Dr. Enomoto's
5 "property and rights to property" in her possession pursuant to a federal tax lien. When
6 Duckett informed Dr. Enomoto of the levy, he objected to paying the IRS the funds slated
7 for delivery into the trust. Duckett then filed an interpleader action in state court against
8 Dr. Enomoto, the IRS, Carol Severyn, and Carol Severyn Trust Management Services. In
9 August 2014, the IRS removed the action to this Court pursuant to 28 U.S.C. § 1444.

10 After removal, Dr. Enomoto appointed Kurt Tittelbach, an Arizona licensed
11 private fiduciary, as the trust's successor trustee. The Court then dismissed Severyn and
12 Carol Severyn Trust Management Services, and Tittelbach intervened in his capacity as
13 successor trustee. According to the IRS, Dr. Enomoto still owed a balance of \$499,761
14 as of May 18, 2015.

15 The IRS initially moved for summary judgment directing that the interpleaded
16 funds be given to the IRS. Dr. Enomoto and Tittlebach filed a cross-motion for summary
17 judgment precluding IRS entitlement to the trust. The Court denied both motions
18 because the funds were still being held by Duckett and were not yet held in trust.
19 Accordingly, the Court ordered Duckett to transfer the funds (minus her attorney fees) to
20 Tittelbach and then dismissed her.

21 Now that the funds are held in trust, the parties have renewed their summary
22 judgment motions. The disputed legal issue is whether the federal tax lien on Dr.
23 Enomoto's "property" or "rights to property" attaches to the trust funds.
24

25 **II. LEGAL STANDARD**

26 A motion for summary judgment tests whether the opposing party has sufficient
27 evidence to merit a trial. At its core is whether sufficient evidence exists from which a
28

1 reasonable jury could find in favor of the party opposing the motion. Summary judgment
2 should be granted if the evidence reveals no genuine dispute about any material fact and the
3 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). For purposes
4 of the pending motions, there are no disputed facts. This case therefore presents a pure
5 question of law.
6

7 **III. ANALYSIS**

8 To satisfy a tax deficiency, the federal government may impose a lien on any
9 “property” or “rights to property” belonging to the taxpayer:

10 If any person liable to pay any tax neglects or refuses to pay the same after
11 demand, the amount . . . shall be a lien in favor of the United States upon
12 all property and rights to property, whether real or personal, belonging to
such person.

13 26 U.S.C. § 6321. This statutory language “is broad and reveals on its face that Congress
14 meant to reach every interest in property that a taxpayer may have.” *United States v.*
15 *Nat’l Bank of Commerce*, 472 U.S. 713, 719-20 (1985). “Stronger language could hardly
16 have been selected to reveal a purpose to assure the collection of taxes.” *Glass City Bank*
17 *v. United States*, 326 U.S. 265, 267 (1945).

18 The parties dispute whether the funds held in Ms. Enomoto’s testamentary trust
19 constitute Dr. Enomoto’s “property” or “rights to property” for purposes of the federal
20 tax lien. Answering this question requires a two-step analysis. The Court must “look
21 initially to state law to determine what rights the taxpayer has in the property the
22 Government seeks to reach, then to federal law to determine whether the taxpayer’s state-
23 delineated rights qualify as ‘property’ or ‘rights to property’ within the compass of the
24 federal tax lien legislation.” *Drye v. United States*, 528 U.S. 49, 58 (1999).

25 **A. Dr. Enomoto’s rights in the trust funds under Arizona law**

26 Determination of Dr. Enomoto’s rights in the trust funds begins with the Arizona
27 Trust Code. A.R.S. §§ 14-10101 to 14-11102. The Code sets default and mandatory
28

1 rules governing trusts created under Arizona law. A.R.S. §§ 14-10105, 14-10107. On
2 matters where the Code is silent, the common law of trusts governs. A.R.S.
3 § 14-10106(A). On certain topics, the Code instructs courts to look to the Second
4 Restatement of Trusts for interpretation of the common law. A.R.S. § 14-10106(B).
5 When interpreting a trust, the overriding goal is to ascertain the intent of the settlor.
6 *Weinstein v. Weinstein*, 235 Ariz. 40, 44, 326 P.3d 307, 311 (Ct. App. 2014).

7 Under the Code, a beneficiary may recover damages against a trustee who violates
8 a duty owed to him. A.R.S. §§ 14-11001(A), 14-11002(A). Thus, if a trustee pays a
9 beneficiary less trust money than is owed, the beneficiary may recover the difference.
10 *See* A.R.S. § 14-11002(A)(1). Similarly, courts may remedy a trustee’s breach of duty by
11 compelling the trustee to pay money. A.R.S. § 14-11001(B)(3). In this framework, a
12 beneficiary’s right to trust funds depends on the trustee’s duty to pay the funds, which
13 itself depends on the terms of the trust. This principle is easily stated but not so easily
14 applied. Three examples illustrate the difficulty.¹

15 Start with a simple case. Suppose a trust directs the trustee to pay the beneficiary
16 \$1,000 from the trust funds each year. Under these terms, the trustee’s duty to pay is
17 clearly defined, and a violation would be obvious. Were the trustee to pay only \$800 one
18 year, the beneficiary could recover the remaining \$200. The beneficiary’s right to the
19 trust funds would be a *right to specific payments at specific times*.

20 Now consider a harder case. Suppose a trust directs the trustee to pay the
21 beneficiary “so much or all of the income and principal of the trust as may be required for
22 support in the beneficiary’s accustomed manner of living.” Traditionally, this sort of
23 trust was known as a “support trust.” *See* Restatement (Second) of Trusts § 154 (Am.
24 Law Inst. 1959). The Arizona Trust Code refers to it as a “discretionary trust” in which
25

26 ¹ For a more thorough discussion of beneficiary rights in trust assets for purposes
27 of the federal tax lien, see 4 William D. Elliott, *Federal Tax Collections, Liens & Levies*
28 ¶ 9.09[3][j] (2016 update) and sources cited therein.

1 the trustee's discretion is "limited by an ascertainable standard." See A.R.S.
2 § 14-10504(E). Whatever the label, the trustee's duty to pay is somewhat fuzzy because
3 the trust does not specify payment amounts or schedules. But the duty is not empty, since
4 the trustee must pay whatever amount is in fact required under the standard set forth in
5 the trust. See Restatement (Second) of Trusts § 154 cmt. d. Thus, if the beneficiary is
6 "accustomed" to a \$50,000-per-year lifestyle and has no income, a trustee who pays only
7 \$40,000 per year could be liable for the remaining \$10,000. See A.R.S. § 14-10504(C)
8 (recognizing beneficiary's right to "maintain a judicial proceeding against a trustee for
9 . . . failure to comply with a standard for distribution"). The beneficiary's right to the
10 trust funds would be a *right to payments in accordance with an ascertainable standard*.

11 Now consider an extreme case. Suppose a trust permits the trustee to pay the
12 beneficiary "any amount, including zero, of the income or principal of the trust as the
13 trustee in his sole discretion shall determine." Traditionally, this sort of trust was known
14 as a "discretionary trust." See Restatement (Second) of Trusts § 155. The Arizona Trust
15 Code refers to it as a "purely discretionary" trust. See A.R.S. § 14-10504(E). Whatever
16 the label, the trustee's duty to pay is tenuous because "the trustee may in his absolute
17 discretion refuse to make any payment to the beneficiary." Restatement (Second) of
18 Trusts § 155 cmt. c. But the trustee is not absolved of all duty. Trustees must always act
19 in good faith. A.R.S. § 14-10105(B)(2); *In re Wills' Trust Estate*, 8 Ariz. App. 591, 595,
20 448 P.2d 435, 439 (Ct. App. 1968). No trust language, however strong, can entirely
21 remove a power held in trust from judicial review; otherwise "the power would not be
22 held in trust at all." *Stix v. Commissioner*, 152 F.2d 562, 563 (2d Cir. 1945) (Learned
23 Hand, J.). Thus, no matter how broad a trustee's discretion, he may not abuse it. See
24 A.R.S. § 14-10504(C) (recognizing beneficiary's right to "maintain a judicial proceeding
25 against a trustee for an abuse of discretion"). An Arizona court reviewing a trustee's
26 exercise of discretion would treat the decision with deference and would consider several
27 factors, including the trust's terms and purposes and the trustee's motives. *In re Esther*
28

1 *Caplan Trust*, 228 Ariz. 182, 186-87 ¶¶ 17-21, 265 P.3d 364, 368-69 (Ct. App. 2011).
2 The beneficiary's right to the trust funds would be a *right to payments the withholding of*
3 *which would constitute an abuse of discretion.*

4 These examples represent points on a spectrum of the possible extent of a
5 beneficiary's rights to trust assets under Arizona law. On this spectrum, Dr. Enomoto's
6 rights fall somewhere between the second and third examples because Ms. Enomoto's
7 testamentary trust has elements of a traditional support trust and a traditional
8 discretionary trust.

9 On one hand, the trust is clearly intended for Dr. Enomoto's support. The trust
10 identifies funds that "shall be distributed" to Dr. Enomoto:

11 The One-Third share of my Estate, other than tangible personal property,
12 that is to be distributed to my son DENNIS MASAKI ENOMOTO, if such
13 amount should exceed \$50,000, shall be distributed in trust.

14 The trust then sets an ascertainable standard for payment:

15 The Trustee shall pay to DENNIS MASAKI ENOMOTO so much or all of
16 the net income and principal of the trust as in the sole discretion of the
17 Trustee may be required for support in the beneficiary's accustomed
18 manner of living, for medical, dental, hospital, and nursing expenses, or for
reasonable expenses of education, including study at college and graduate
levels.

19 Such payments are mandatory, since the trustee "shall pay" this amount and the trust
20 identifies no other beneficiary.

21 On the other hand, the trust leaves to "the sole discretion of the Trustee" the
22 specific determination of how much payment is required under the articulated standard.
23 In making this determination, the trustee may consider or disregard other potential
24 sources of income:

25 In the Trustee's sole discretion and to the extent the Trustee deems
26 advisable, the Trustee may consider or disregard the funds available to the
27 beneficiary from other sources or the duty of anyone to support the
beneficiary.

1 Once the trust principal falls below \$10,000, however, the trustee has no discretion and
2 must distribute the remaining funds:

3 Should the principal of the trust drop below \$10,000, the Trustee shall
4 distribute the balance of the principal, together with the undistributed
5 income therefrom to DENNIS MASAKI ENOMOTO.

6 Trusts of this nature—directing payment under a general standard while leaving
7 specific calculations to the trustee—are sometimes referred to as “discretionary support”
8 trusts or “hybrid” trusts. *See Evelyn Ginsberg Abravanel, Discretionary Support Trusts,*
9 68 Iowa L. Rev. 273, 277-80 (1983). As with traditional support trusts, the trustee must
10 pay Dr. Enomoto in accordance with an ascertainable standard. But as with traditional
11 discretionary trusts, the trustee’s determination of exactly how much payment is required
12 is reviewable only for abuse of discretion. The result is essentially a traditional support
13 trust, but with deferential judicial review. That is, a trustee applying the payment
14 standard in Ms. Enomoto’s testamentary trust has more leeway than a trustee applying the
15 equivalent standard in a traditional support trust. *See id.* at 290. Thus, Dr. Enomoto’s
16 right to the trust funds is a *right to payments the withholding of which would constitute an*
17 *abuse of discretion in applying an ascertainable standard.*

18 Dr. Enomoto tries to bypass all this complexity with a simple argument:

19 (1) Under the Arizona Trust Code, the trust here is a
20 “discretionary trust.”

21 (2) According to cases in other jurisdictions, the federal tax
22 lien does not attach to “discretionary trusts.”

23 (3) Therefore the federal tax lien does not attach to the trust
24 here.

25 But this argument rests on an equivocation. The Arizona Trust Code uses the term
26 “discretionary trust” broadly, in a way that includes traditional support trusts. *Compare*
27 A.R.S. § 14-10504(A)(1) *with* Restatement (Second) of Trusts § 154. The cases cited by
28 Dr. Enomoto, however, use the term narrowly, in explicit contrast with traditional support

1 trusts. *See, e.g., First of America Trust Co. v. United States*, No. 91-2352, 1993 WL
2 327684, at *2-3 (C.D. Ill. Mar. 15, 1993). Thus, Dr. Enomoto’s argument fails because it
3 relies on conflicting meanings of a word at the same time.

4 The confusion is understandable because the term “discretionary trust” only
5 recently acquired a dual meaning. The Second Restatement of Trusts distinguishes
6 “discretionary trusts” from “support trusts.” Restatement (Second) of Trusts §§ 154, 155.
7 But the Third Restatement abandons the term “support trust” and instead uses the term
8 “discretionary trust with a support standard” to describe the same concept. Restatement
9 (Third) of Trusts § 60, rptr’s note to cmt. a (Am. Law Inst. 2003). The Uniform Trust
10 Code follows the Third Restatement, categorizing as a type of “discretionary trust” what
11 was traditionally known as a support trust. *See* Unif. Trust Code § 504 & cmt. (Unif.
12 Law Comm’n 2000, amended 2010). The Arizona Trust Code follows suit. *See* A.R.S.
13 § 14-10504.² Importantly, this change in terminology does not affect the beneficiary’s
14 underlying right to compel payment. *See* Unif. Trust Code § 504 cmt. It is the nature of
15 this right that is relevant here.

16 **B. Whether Dr. Enomoto’s rights in the trust funds qualify as “property”**
17 **or “rights to property” for purposes of the federal tax lien**

18 “The question whether a state-law right constitutes ‘property’ or ‘rights to
19 property’ is a matter of federal law.” *United States v. Nat’l Bank of Commerce*, 472 U.S.
20 713, 727 (1985). The statute itself provides little guidance on the matter. It merely
21 imposes a lien on “all property and rights to property, whether real or personal, belonging
22 to” the delinquent taxpayer. 26 U.S.C. § 6321. It does not define the terms “property” or
23 “rights to property.”

24
25 _____
26 ² The Arizona Code heightens confusion because, unlike the Uniform Code, it
27 instructs courts to use the Second Restatement and *not* the Third Restatement as a source
28 of common law in determining rights of a beneficiary’s creditors and a settlor’s intent.
Compare Unif. Trust Code § 106 with A.R.S. § 14-10106(B).

1 This imprecision is intentional. Congress “knew that the forms and varieties of
2 property would remain in flux, and that a definition capable of precisely capturing those
3 valuable interests for the tax gatherers’ harvest would elude it.” *Randall v. H. Nakashima*
4 & *Co.*, 542 F.2d 270, 278 (5th Cir. 1976). By not “enumerating attributes or varieties of
5 property rights,” Congress gave the statutory language “expansiveness” and “flexibility.”
6 *Id.* at 279.

7 But with flexibility comes unpredictability. With Congress having kicked the can
8 down the road, courts across the country are tasked with applying broad statutory
9 language in a wide variety of situations, without the benefit of bright lines or clear tests.

10 The Supreme Court has provided some limited direction. “In determining whether
11 a federal taxpayer’s state-law rights constitute ‘property’ or ‘rights to property,’ ‘[t]he
12 important consideration is the breadth of the control the [taxpayer] could exercise over
13 the property.” *Drye v. United States*, 528 U.S. 49, 61 (1999) (quoting *Morgan v. Comm’r*
14 *of Internal Revenue*, 309 U.S. 78, 83 (1940)) (alterations in original). Applying this
15 metric, the Supreme Court has held that “a taxpayer’s right under state law to withdraw
16 the whole of the proceeds from a joint bank account constitutes ‘property’ or the ‘right to
17 property’ subject to levy for unpaid federal taxes, although state law would not allow
18 ordinary creditors similarly to deplete the account.” *Id.* at 58 (citing *Nat’l Bank of*
19 *Commerce*, 472 U.S. at 723-27). Similarly, “a taxpayer’s right under a life insurance
20 policy to compel his insurer to pay him the cash surrender value qualifies as ‘property’ or
21 a ‘right to property’ subject to attachment for unpaid federal taxes, although state law
22 shielded the cash surrender value from creditors’ liens.” *Id.* (citing *United States v. Bess*,
23 357 U.S. 51, 56-57 (1958)). By contrast, “no federal tax lien could attach” to the
24 proceeds of a life insurance policy, since those proceeds were “unavailable to the insured
25 in his lifetime.” *Id.* at 58-59 (citing *Bess*, 357 U.S. at 55-56).

26 Here, the question is whether a beneficiary has enough “control” over funds held
27 in a discretionary support trust to trigger federal tax lien attachment. Neither the
28

1 Supreme Court nor the Ninth Circuit Court of Appeals has addressed this question. Other
2 courts have, with mixed results. It is difficult to harmonize these results in a principled
3 way. Courts appear to be deciding the question *ad hoc*, based on the unique combination
4 of circumstances before them. In this judicial landscape, the best a court can do is
5 identify the factors most relevant to its decision and explain how those factors compare or
6 contrast with similar cases.

7 **1. Cases in which the federal tax lien did not attach**

8 Dr. Enomoto cites four cases in support of his position that the tax lien does not
9 attach to the trust funds. One has nothing to do with taxes or federal law. *Myers v.*
10 *Kansas Dep't of Soc. & Rehab. Servs.*, 254 Kan. 467 (1994).³ The other three are also
11 unpersuasive.

12 In *First of America Trust Co. v. United States*, No. 91-2352, 1993 WL 327684
13 (C.D. Ill. Mar. 15, 1993), the delinquent taxpayer was one of several beneficiaries of a
14 trust containing both “support” language and “discretionary” language:

15 [T]he Trustee shall pay or apply the net income and so much of the
16 principal as the Trustee may in its sole discretion deem necessary or
17 appropriate for the support, comfort and welfare of such of [the
18 beneficiaries] as shall be living from time to time, . . . the Trustee having
19 full power and authority from time to time to fix and change the amounts to
20 be so received by them, respectively.

21 *Id.* at *3 (second and third alterations in original). The court determined that the
22 beneficiary could not “compel payment” from the trust principal under Maryland law and
23 therefore had no “property interest” in the trust principal for purposes of the federal tax

24 ³ Dr. Enomoto cites *Myers* as an instance where a trust similar to Ms. Enomoto’s
25 testamentary trust was deemed “discretionary” under state law. 254 Kan. at 477. The
26 court concluded the beneficiary could not “compel the trustee to pay” any trust funds. *Id.*
27 But here, Dr. Enomoto *can* compel the trustee to pay trust funds in some circumstances,
28 as explained above. Moreover, the trust in *Myers* did not place the word “shall” next to
the word “pay,” a fact the court relied on in concluding the trust was discretionary. *See*
id. Ms. Enomoto’s trust, in contrast, directs that the trustee “shall pay” Dr. Enomoto.

1 lien. *Id.* at *4-5. This determination is unpersuasive here because under Arizona law Dr.
2 Enomoto *can* compel the trustee to pay trust funds in some circumstances, as explained in
3 Part III.A. Moreover, *First of America Trust* is factually distinguishable because there,
4 (1) the trustee had not invaded the trust principal in the eighteen years since the trust was
5 created, suggesting no beneficiary had a property interest in the principal, and (2) the
6 trust had been created for multiple beneficiaries, which means (though not stated by the
7 court) that any single beneficiary’s right to invade the trust principal would reduce the
8 trust income available to the others. *See id.* at *3.

9 *In re Wilson*, 140 B.R. 400 (N.D. Tex. 1992) is inapplicable here because the trust
10 there gave the trustee discretion as to whether to pay at all, not just as to how much
11 payment was required under an ascertainable standard:

12 *My Trustee, in its sole discretion, may distribute sixty (60%) of the income*
13 *to or for the benefit of my daughter, NANCY LOU WILSON; provided*
14 *however, any part or all of such income that is not distributed shall be*
15 *accumulated for the benefit of my daughter, NANCY LOU WILSON, and*
16 *my Trustee shall have the sole discretion to distribute all or any part of such*
accumulated income to or for the benefit of my daughter at such time or
times as my Trustee determines to be in the best interest of my daughter.

17 *Id.* at 402 (emphasis added). Moreover, unlike here, the trust specified where the funds
18 would go upon the beneficiary’s death:

19 *Any income and/or accumulated income not distributed at the date of my*
20 *daughter’s death shall be distributed to her descendants.*

21 *Id.* According to the court, that was a “clear statement that the Trustee is not obligated to
22 distribute anything to the [beneficiary] during her lifetime.” *Id.* at 406-07.

23 *Texas Commerce Bank National Ass’n v. United States*, 908 F. Supp. 453 (S.D.
24 Tex. 1995) is least persuasive of all because the opinion contains no complete quotation
25 of the relevant trust language, making a thorough evaluation of the court’s reasoning
26 impossible. Thus, none of the cases cited by Dr. Enomoto preclude federal tax lien
27 attachment to his right to the trust funds.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Cases in which the federal tax lien attached

The IRS relies principally on *United States v. Delano*, 182 F. Supp. 2d 1020 (D. Colo. 2001), an opinion with sound reasoning but limited applicability. There the delinquent taxpayer, James Delano, was the sole beneficiary of a trust containing language substantially similar to Ms. Enomoto’s testamentary trust:

During my son’s lifetime, my trustee shall pay to or apply for the benefit of my son so much of the income or principal, or both, as my trustee in its sole and absolute discretion shall deem necessary or advisable for his maintenance, health, education, comfort and welfare. My trustee may, but need not, consider all funds known to my trustee to be available to him. Any undistributed income may be added to principal from time to time in the discretion of my trustee.

Id. at 1022. The court held that this trust did not give the trustee “discretion to refuse all payments” to Delano and therefore Delano’s interest in the trust constituted “a property interest to which a federal tax lien may attach.” *Id.* at 1023-25. In reaching this conclusion the court noted two trust characteristics that are also present here. First, the taxpayer was the trust’s sole beneficiary. *Id.* at 1023. Second, the word “shall” preceded the word “pay” whereas the word “discretion” followed words referring to amount of payment, indicating the trustee’s discretion governed only how much to pay, not whether to pay. *See id.* at 1023. So too here:

The Trustee shall pay to DENNIS MASAKI ENOMOTO so much or all of the net income and principal of the trust as in the sole discretion of the Trustee may be required

These characteristics suggest the settlor in both cases intended the beneficiary to be paid, thus giving the beneficiary some control over the trust funds. Two additional features of Ms. Enomoto’s trust support that inference here: the trust states that the funds “shall be distributed” to Dr. Enomoto and that once the principal falls below \$10,000, the trustee loses all discretion and must pay Dr. Enomoto the remaining funds:

The One-Third share of my Estate, other than tangible personal property, that is to be distributed to my son DENNIS MASAKI ENOMOTO, if such amount should exceed \$50,000, shall be distributed in trust.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

Should the principal of the trust drop below \$10,000, the Trustee shall distribute the balance of the principal, together with the undistributed income therefrom to DENNIS MASAKI ENOMOTO.

In some respects, however, Delano had greater control over the trust funds there than Dr. Enomoto does here, because Delano had the option to terminate the trust and retain all trust assets and because he and his son were the trustees. *Id.* at 1021-23. Thus, the argument for federal tax lien attachment is weaker here than in *Delano*.

A closer analogue is *United States v. Taylor*, 254 F. Supp. 752, 755 (N.D. Cal. 1966). There the delinquent taxpayer, Lee Jones, Jr., was the sole beneficiary of a discretionary support trust that provided in relevant part:

The trustees shall pay to or apply for the benefit of my son, LEE JONES, JR., so much of the net income of said trust, up to the whole thereof, as the Trustees may from time to time deem necessary or advisable for his proper care, maintenance and support. The balance of said net income, if any, shall be accumulated by the Trustees, and from time to time added to the principal of the trust estate.

Id. at 755 n.1. The court determined that this trust gave Jones the “basic beneficial right to receive payments from income to the extent needed for his support” and that federal tax liens “attached to and subsist against that right.” *Id.* at 756. In reaching this conclusion the court noted that the trust, like Ms. Enomoto’s trust, stated the trustees “shall pay” the beneficiary and gave the trustees discretion only as to the amount of payment necessary under the trust standard. *Id.* at 755. The court also noted that under California law, were the trustees to exercise their discretion unreasonably, Jones could compel them to act otherwise. *Id.* Dr. Enomoto has a similar right under Arizona law. The most significant difference between *Taylor* and this case seems to be that in *Taylor* the trustees paid Jones weekly for several months before the government sued them, *id.* at 754, whereas here the trustee has not paid Dr. Enomoto anything. Still, Dr. Enomoto’s control over the trust funds here is comparable to Jones’ control over the trust funds

1 there. Therefore *Taylor*'s conclusion as to tax lien attachment is persuasive and
2 applicable here. The federal tax lien attaches to Dr. Enomoto's right to the trust funds.

3 This conclusion is in accord with other courts that have followed *Taylor*, *see, e.g.*,
4 *Delano*, 182 F. Supp. 2d at 1023; *Magavern v. United States*, 415 F. Supp. 217, 221
5 (W.D.N.Y. 1976), *aff'd*, 550 F.2d 797 (2d Cir. 1977); *United States v. Harris*, No. 95-
6 CR-00227-TEH-1, 2016 WL 524852, at *3 (N.D. Cal. Feb. 10, 2016), as well as at least
7 one restatement of the law, *see* Restatement (Second) of Trusts § 157(d) (United States
8 may pierce support trust to satisfy claim against beneficiary).

9 **3. Enforcement of the lien**

10 If the IRS were seeking only a judgment that the federal tax lien attaches to Dr.
11 Enomoto's right to the trust funds, no further discussion would be necessary. But the
12 IRS' motion also seeks to transfer the entirety of the trust funds to the United States.
13 That is a step too far.

14 Dr. Enomoto's right to the trust funds is, as explained in Part III.A, a right to
15 payments the withholding of which would constitute an abuse of discretion in applying
16 an ascertainable standard. While that right affords him enough control over the trust
17 funds to trigger federal tax lien attachment, it does not by itself justify enforcement of the
18 lien as to any specific amount. As explained in *Taylor*, the right differs from other
19 property rights in that "it has no permanently fixed dollar value" and "is variable
20 according to the taxpayer's needs." 254 F. Supp. at 756. While the right can be
21 "assigned a reasonably accurate dollar value by assessing the taxpayer's current needs
22 and living demands," *id.*, the IRS has provided no evidence of Dr. Enomoto's needs or
23 demands and therefore no reason to think the lien extends to all the trust funds. In other
24 words, the IRS has a valid lien but has not resolved "the practical problems of enforcing
25 the lien." *Id.*

26 *Delano* is of little help. There, the court noted the problem—that *Delano*'s right to
27 the trust had "no permanently fixed dollar value"—but determined that his right extended
28

1 to all the trust assets because (1) the trust named him as the sole beneficiary, (2) the trust
2 would terminate upon his death, and (3) the trust permitted him to terminate the trust and
3 retain all assets without regard to the remainder beneficiaries. 182 F. Supp. 2d at
4 1023-24. Here, in contrast, although Dr. Enomoto is the trust's sole beneficiary, the
5 parties have not adequately briefed the trust consequences of his death⁴ and the trust does
6 not permit him to unilaterally terminate the trust and retain all assets. Therefore it is less
7 clear whether Dr. Enomoto's right extends to all the trust funds.

8 For this reason, the IRS' summary judgment motion will be (1) granted to the
9 extent it seeks a judgment that the federal tax lien attaches to Dr. Enomoto's right to the
10 trust funds but (2) denied without prejudice to the extent it seeks a transfer of those funds
11 to the United States. More evidence would be necessary to justify the latter conclusion.
12 *See Taylor*, 254 F. Supp. at 758 (allowing "additional hearings or proceedings" to
13 effectuate foreclosure of federal tax lien); *accord Magavern*, 415 F. Supp. at 221 (holding
14 federal tax levy valid but stating "determination of the actual amount of trust income
15 and/or principal reached by the levy must await trial").

16 Admittedly, this outcome is somewhat unsatisfactory. Both parties have advanced
17 simpler, more practicable positions: the IRS says it is entitled to all the trust funds, and
18 Dr. Enomoto says it is not entitled to any. But both of these positions oversimplify the
19 facts and the law. In reality, Dr. Enomoto's right to the trust funds gives him enough
20 control to trigger tax lien attachment, but it is too circumstance-dependent to allow
21 enforcement of the lien as to any specific amount on the current record.
22
23
24

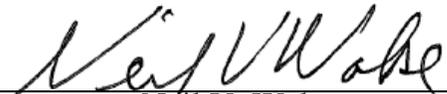
25 ⁴ The only relevant assertion from either party is a sentence in Dr. Enomoto's
26 Reply brief: "Pursuant to A.R.S. § 14-2604(A), at Dr. Enomoto's decease, the remaining
27 Trust assets would pour back into the residuary under the Will, to be distributed to the
28 other two beneficiaries (Dr. Enomoto's sisters)." (Doc. 74 at 4.) The sentence is not
followed by any citation to authority.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS THEREFORE ORDERED that the IRS' Renewed Motion for Summary Judgment (Doc. 91) is (1) granted to the extent it seeks a judgment that the federal tax lien attaches to Dr. Enomoto's right to the funds held in Ms. Enomoto's testamentary trust created for his benefit, (2) denied without prejudice to the extent it seeks a transfer of those funds to the United States, and (3) otherwise denied.

IT IS FURTHER ORDERED that Dr. Enomoto and Tittelbach's Renewed Motion for Summary Judgment (Doc. 89) is denied.

Dated this 18th day of April, 2016.


Neil V. Wake
United States District Judge