

IRS Can't Enforce Songwriter's \$20M Lien, 6th Circ. Says

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Law360 (March 10, 2020, 7:29 PM EDT) -- The [Internal Revenue Service](#) cannot enforce a \$20 million lien on assets held by a Motown songwriter's partnership because the agency did not show that royalty assets were transferred to avoid paying taxes, the Sixth Circuit ruled Tuesday.

A Michigan federal court correctly held in April 2018 that Eddie Holland Jr.'s transfer of royalty assets, generated from a catalog of popular songs that includes "You Can't Hurry Love" and "Where Did Our Love Go," was not done for fraudulent purposes, the three-judge panel unanimously ruled. The IRS cannot impose the lien because it did not prove that the transfer of assets was done to interfere with the collection of taxes, the opinion said.

The U.S. government does not have "evidence creating a genuine issue as to whether the transfer of his partnership assets was a fraud upon the IRS or his creditor," Circuit Judge Raymond M. Kethledge said.

The appeals court also upheld the lower court's finding that the [Royal Bank of Scotland PLC](#), which refinanced a \$10 million loan for Holland and held a security interest in the royalty rights, was entitled to a first-priority distribution from sale proceeds.

Holland, part of Motown's famous Holland-Dozier-Holland songwriting team, [had argued](#) that he had to transfer his royalties to the partnership when he borrowed \$10 million in 1998 because of terms dictated by the lender that relied on the royalty income as collateral, according to court documents. Holland maintained that the reasoning for the government's claim that the partnership was his alter ego was based on circumstantial evidence since he controls the partnership, and a false belief that money borrowed against the royalty income was done to hinder creditors.

Holland said a more realistic version of the 1998 events was that he wanted to borrow against his royalty income, including \$1.5 million to pay his taxes, according to court documents.

The U.S. sued Holland in 2013 to collect on taxes it said were unpaid for various years since 1990 and to enforce tax liens against the royalty assets held by Edward Holland LP. It added Scotland Bank as a party to the case, as well as two attorneys from a law firm that had previously represented Holland and claimed a security interest in the assets.

The Michigan district court rejected the government's alter ego and fraudulent conveyance claims on the grounds that since Holland was the sole owner of the partnership, "his net worth was not affected by transferring the royalty assets" to the partnership.

Since the government could not directly attach its lien to the royalty assets in the partnership, the district court ruled that Scotland Bank's claim was superior.

The U.S. government then filed an appeal in the Sixth Circuit.

Counsel for Holland, Neal Nusholtz, praised the ruling, telling Law360 that Holland entered into a loan transaction to monetize royalty assets and that such a transaction is not unusual in the music industry.

"I thought the court was entirely correct," Nusholtz said. "It was a loan transaction; it was not done to avoid paying taxes."

Gregory J. Fleesler, counsel for the Royal Bank of Scotland, said he had no comment.

The U.S. government did not immediately return a request for comment.

Circuit Judges David W. McKeague, Raymond M. Kethledge and Eric E. Murphy sat on the panel for the Sixth Circuit.

Holland is represented by Neal Nusholtz of Neal Nusholtz PLLC.

The Royal of Bank of Scotland is represented by Gregory J. Fleesler of [Moses & Singer](#).