

(2) the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

(d) ASSETS.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101-647, set out as a note under section 3001 of this title.

§ 3303. Value for transfer or obligation

(a) TRANSACTION.—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) REASONABLY EQUIVALENT VALUE.—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

(c) PRESENT VALUE.—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

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

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§ 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 rea-

sonably 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.)

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