NOMINEES, ALTER EGOS AND SUCCESSORS

Trial attorneys seeking to locate and attach a judgment debtor's assets may need to determine whether such assets are being held by the debtor's nominees, alter egos or successors.[1]

I. Nominees

"A nominee is one who holds bare legal title to property for the benefit of another." Scoville v. United States, 250 F.3d 1198, 1202 (8th Cir.), cert. denied, 534 U.S. 953 (2001). It is well settled that property held by a taxpayer's nominee or alter ego may be subjected to a federal tax lien or levy. See G.M. Leasing Corp. v. United States, 429 U.S. 338, 350-351 (1977); Scoville v. United States, 250 F.3d at 1201; Richards v. United States (In re Richards), 231 B.R. 571 (E D. Pa. 1999). The "nominee theory involves the determination of the true beneficial or equitable ownership of the property" at issue. Oxford Capital Corp. v. United States, 211 F.3d 280, 284 (5th Cir. 2000). The nominee doctrine "stems from equitable principles." In re Richards, 231 B.R. at 578. "Focusing on the relationship between the taxpayer and the property, the [nominee] theory attempts to discern whether a taxpayer has engaged in a sort of legal fiction, for federal tax purposes, by placing legal title to property in the hands of another while, in actuality, retaining all or some of the benefits of being the true owner." In re Richards, 231 B.R. at 578.

When considering whether a federal tax lien should be foreclosed on property titled to a person other than the taxpayer, there are a number of factors that inform this determination. These factors are:

(1) Whether the record title holder (i.e., the nominee) paid any consideration for the property or whether the consideration paid was inadequate (concomitantly, even if the record title holder "paid" consideration for the property, determine the source of the funds for the acquisition of the property by examining the extent to which the judgment-debtor/taxpayer and the record title holder used their own personal funds to acquire the property);[2]

(2) Whether the property was placed in the name of the nominee in anticipation of a suit or a liability;

[1]Trial attorneys should also be looking for assets fraudulently conveyed by taxpayers to transferees. *See, e.g.*, United States v. Scherping, 187 F.3d 796, 804-806 (8th Cir. 1999), cert. denied, 528 U.S. 1162 (2000); United States v. Green, 201 F.3d 251 (3d Cir. 2000); *see also* BMG Music v. Martinez, 74 F.3d 87 (5th Cir. 1996) (non-tax case, and an example of a judgment creditor pursuing fraudulently transferred asset); SEC v. Antar, 120 F. Supp.2d 431 (D. N.J. 2000) (non-tax case and another example of a judgment creditor (the SEC) using the Uniform Fraudulent Transfer Act to pursue fraudulently transferred assets), aff'd, 44 Fed.Appx. 548, 2002 WL 1774063 (3d Cir. 2002).

[2]The person who actually provides the funds for the purchase of the property may be its equitable owner. *See* Nobel v. Morchesky, 697 F.2d 97, 103 (3d Cir. 1982) (Under Pennsylvania law, "the person or entity 'whose funds are used for the purchase of real property [is] the equitable owner of the property.'") (citations omitted) (non-tax case).

(3) Whether the taxpayer exercises dominion or control over, or has possession of the property at issue after its purchase or transfer;

(4) Whether there is a family or other close relationship between the taxpayer and the nominee;

(5) Whether the taxpayer uses or enjoys the benefits of the property after its purchase or transfer; and

(6) Whether the taxpayer pays the expenses directly, or is the source of the funds for payment of the expenses (such as mortgage, local taxes, insurance, utilities (oil, gas, electric, lawn care, pool maintenance, plumbing, etc.) to maintain the property after title is placed in the name of the nominee.[3]

See In re Richards, 231 B.R. at 579 (citing United States v. Klimek, 952 F. Supp. 1100, 1113 (E.D. Pa. 1997) (collecting cases); United States v. Olson, 2002 WL 575744 (N.D. Ill. 2002) (citing Shades Ridge Holding Co., Inc. v. United States, 888 F.2d 725, 729 (11th Cir. 1989); Libutti v. United States, 107 F.3d 110, 120 (2d Cir. 1997)); United States v. Bannister, 2002 WL 31360657 at * 2 (W.D. Wis. 2002); United States v. Reed, 168 F. Supp.2d 1266, 1268-1269 (D. Utah 2001); United States v. Marsh, 114 F. Supp.2d 1036, 1043 (D. Hawaii 2000); Porta-John of America, Inc. v. United States, 4 F. Supp.2d 688, 701 (E.D. Mich. 1998); Towe Antique Ford Foundation v. IRS, 791 F. Supp. 1450, 1454 (D. Montana 1992) (listing nominee factors), aff'd 999 F.2d 1387 (9th Cir. 1993); Simpson v. United States, 1989 WL 73212 at * 6 (M.D. Fla. 1989) (collecting cases). And some courts note that the failure to record a conveyance may be a relevant factor for nominee status. See United States v. Reed, supra (citing United States v. Bell, 27 F.Supp.2d 1191, 1195 (E.D. Cal. 1998)); Porta-John of America, Inc., supra; In re Richards, supra.

Not all of the foregoing nominee factors are of equal weight, and they "should not be applied

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[3]In a non-tax case, a judgment creditor prevented a judgment debtor from obtaining a bankruptcy discharge under 11 U.S.C. § 727(a)(2)(A), because the debtor continually concealed his interest in real properties with the actual intend to defraud by living on the properties purchased in the names of his parents, by making all the mortgage payments, and by making improvements thereon. Keeney v. Smith (In re Keeney), 227 F.3d 679 (6th Cir. 2000) (applying bankruptcy continuing concealment doctrine).While "actual intent to defraud" is ***not*** a factor to be considered under the nominee doctrine, the Sixth Circuit's decision in Keeney is noteworthy because "[a] beneficial ownership in the property can be inferred ... from [the judgment debtor's] payment for and use of the properties, including his rent-free residence on each and payment of all mortgage obligations. Id. at 683-684. The Sixth Circuit also noted several other cases which similarly concluded that a debtor holds a beneficial interest in a home "where the debtor lived in the house, made mortgage and tax, and escrow payments, and used the house as collateral for loans." Id. at 684-685 (collecting cases, including Friedell v. Kauffman (In re Kauffman), 675 F.2d 127, 128 (7th Cir. 1981)).

rigidly or mechanically, as no one factor is determinative." In re Richards, 231 B.R. at 759.[4] However, one of the most significant factors for determining nominee status is whether the judgment debtor-taxpayer can control (either directly or indirectly) the asset at issue. See In re Richards, 231 B.R. at 579 (citing United States v. Kudasik, 21 F. Supp.2d 501, 508 (W.D. Pa. 1998) (citing Shades Ridge Holding Co., Inc. v. United States, 888 F.2d 725, 728 (11th Cir. 1989)); accord United States v. Novotny, 2001 WL 1673628 at * 3-4 (D. Colo. 2001) ("The critical issue is who has substantial control over the property.") (citations omitted).

The use of the nominee doctrine to collect federal taxes has been approved where the nominee is:

(1) an individual (e.g., United States v. Reed, supra; United States v. Hahn, 1998 WL 751838 (E.D. Tenn. 1998), aff'd, 182 F.3d 919 (6th Cir. 1999); United States v. Williams, 581 F. Supp. 756, 758 (N.D. Ga. 1982), aff'd, 729 F.2d 1340 (11th Cir. 1984) (per curiam); Simpson v. United States, supra, 1989 WL 73212 (M.D. Fla.));[5]

(2) a trust (e.g., United States v. Marsh, supra; United States v. Schaut, 2001 WL 1665314 (N.D.Ill. 2001); In re Richards, 231 B.R. 571; The Colby B. Foundation v. United States, 1997 WL 1046002 (D. Ore. 1997), aff'd, 166 F.3d 1217 (Table), 1999 WL 24542 (9th Cir. 1999); and

(3) a corporate entity (e.g., Shades Ridge Holding Co, Inc. v. United States, supra; Porta-John of America v. United States, supra; United States v. Klimek, supra; United States v. Bell, supra).

In addition, the assets of an unincorporated business can be applied to the liability of the proprietor even if he or she uses another individual as the nominee for the business. LiButti v. United States, 107 F.3d 110, 119-120 (2d Cir. 1997).

II. Alter Ego Doctrine

A related principle that can be used to collect a judgment debtor's assets is the alter ego doctrine. There are common elements between the alter ego and the nominee doctrines. However, at bottom, the alter ego doctrine focuses on the relationship between the taxpayer and the alter ego (i.e., whether the taxpayer is similar to or controls another individual, trust, business or corporation (*see, e.g.*,Today's Child Learning Center, Inc. v. United States, 40 F. Supp.2d 268, 273-274 (E.D. Pa. 1998); Ross Controls v. United States, 164 B.R. 721, 726-728 (E.D. Pa.

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[4]Whether an individual or entity is a nominee of the taxpayer "is dependent upon the facts and circumstances of each case." Simpson v. United States, 1989 WL 73212 at * 6.

[5]*See also* United States v. Miller Brothers Construction Co., 505 F.2d 1031, 1036 (10th Cir. 1974); United States v. McCullough, 1994 WL 374471 (S.D.Ill. 1994); United States v. Mayfield, 1994 WL 764114 (S.D. Ind. 1994).

1994)), while the nominee doctrine focuses on the relationship between the taxpayer and the property (i.e., whether the taxpayer places legal title of property in the hands of another while retaining beneficial use and ownership thereof (*see, e.g.*, United States v. Klimek, supra; Simpson v. United States, supra; Williams v. United States,

581 F. Supp. 756 (mother was nominee for son where she held legal title to property); United States v. Code Products, Inc., 216 F. Supp. 281, 284 (E.D. Pa. 1963) ("a prospective mortgagee cannot achieve priority for his mortgage over properly filed tax liens by seeing to it that the prospective mortgagor takes title in the name of a straw party and then getting the mortgage from that straw party."); United States v. Miller Bros. Constr. Co., 505 F.2d 1031 (10th Cir. 1974) (United States permitted to foreclose lien against real property equitably owned by taxpayer)).

The alter ego doctrine, like the nominee doctrine, is a doctrine grounded in equity. *See* Tri-State Equipment v. United States, 1997 WL 375264 at * 12 (E.D. Cal. 1997) (citation omitted). The alter ego doctrine will be applied "whenever necessary to avoid injustice" or where public policy demands its application. Ragan v. Tri-County Excavating, Inc., 62 F.3d 501, 508 (3d Cir. 1995) (non-tax case). In connection with federal tax cases, the "Government's inability to satisfy legitimate tax debts clearly may form a sound basis for" the application of the alter ego doctrine. Valley Finance, Inc. v. United States, 629 F.2d 162, 172 (D.C. Cir. 1980) (citations omitted), cert. denied, 451 U.S. 1018 (1980); accord Towe Antique Ford Foundation v. IRS, 999 F.2d at 1391 (citing Valley Finance, supra); Wolfe v. United States, 798 F.2d 1241, 1244 (9th Cir. 1986) (alter ego doctrine applied and corporate form disregarded where corporation was used to "evade a public duty, such as the paying of taxes."), amended on other grounds, 806 F.2d 1410 (9th Cir.1986), cert. denied, 482 U.S. 927 (1987); *see also* United States v. Scherping, 187 F.3d at 801, 804 ("While taxpayers are permitted to reduce their tax burden by any lawful means available, they are not permitted "to construct paper entities to avoid taxation [or the payment of taxes] when those entities are without economic substance." *** "[T]here are strong public policy reasons for reverse piecing the corporate veil in the present case, that is to avoid fraud[6] *and collecting delinquent federal taxes."*) (emph. added).

The determination of whether an alter ego relationship exists between a taxpayer and a corporation, trust, individual or other entity, is made by examining the facts and circumstances of a particular case. *See, e.g.*, Gagliardi v. United States, 1996 U.S. Dist. Lexis 15593 at * 20 (W.D.

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[6]Fraud, however, is ***not*** a necessary element for the application of the alter ego doctrine. Ragan v. Ragan v. Tri-County Excavating, Inc., 62 F.3d at 508 (Under Pennsylvania law, "no finding of fraud or illegality is required before the corporate veil may be pierced, but rather the corporate entity may be disregarded 'whenever it is necessary to avoid injustice.'") (citations omitted) (non-tax case); DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 684 (4th Cir. 1976) (non-tax case) ("[P]roof of plain fraud is not a necessary element in a finding to disregard the corporate entity.") (citing, among other cases, Anderson v. Abbott, 321 U.S. 349, 362 (1944); National Marine Service, Inc. v. C.J. Thibodeaux & Co., 501 F.2d 940, 942 (5th Cir. 1974)). The Eighth Circuit in Scherping, supra, also noted that "proof of strict common law fraud was not required" to apply the reverse piercing branch of the alter ego doctrine, and affirmed the district court's holding that the trusts were "sham entities created on behalf of and used by the taxpayers to evade payment of their federal income tax liabilities." 187 F.3d at 802 (citations omitted).

Pa. 1996) (citations omitted), aff'd, 129 F.3d 1255 (3d Cir. 1997), cert. denied, 524 U.S. 955 (1998); Zahra Spiritual Trust v. United States, 910 F.2d 240, 245 (5th Cir. 1990) (court should focus on the relationship between taxpayer and entity, and listing factors to be considered); United States v. Walton,

909 F.2d 915, 928 (6th Cir. 1990); Loving Saviour Church v. United States, 556 F. Supp. 688, 692 (D. S.D. 1983), aff'd, 728 F.2d 1085 (8th Cir. 1984) (per curiam).

Courts that have been called upon to apply the alter ego doctrine in tax cases use objective factors in determining whether an alter ego relationship exists. *See, e.g.*, Century Hotels v. United States, 952 F.2d 107, 110 n.5 (5th Cir. 1992) (listing numerous objective factors to be considered in alter ego case, including: (1) whether taxpayer expended personal funds for property titled in the name of the entity; (2) whether taxpayer enjoyed the benefit and use of the property; (3) whether a close family relationship existed between taxpayer and title holder of property; (4) whether taxpayer exercised dominion and control over the property; (5) whether the entity maintained its own books and records, including bank accounts; (6) whether funds are transferred between taxpayer and the entity showing commingling of assets; and (7) whether the entity has its own separate existence and identity); Horton Dairy, Inc. v. United States, 986 F.2d 286, 289 (8th Cir. 1993); Loving Saviour Church v. United States, 728 F.2d at 1086 (church was alter ego of taxpayers where taxpayers treated church assets as their own in that their residence, business and farmland comprised church property; insurance was in taxpayer's name; taxpayer was the minister and trustee and was in control of the church; church funds used to pay personal expenses of taxpayer; close family relationship between church officers and taxpayer; taxpayers transferred property to church for little or no consideration; taxpayers supported by church funds); F.P.P. Enters. v. United States, 830 F.2d at 118 (listing objective factors); Zahra Spiritual Trust v. United States, 910 F.2d at 245; Lemaster v. United States, 891 F.2d 115, 117-119 (6th Cir. 1989); Grant Investment Fund v. IRS, 1993 WL 269617 (9th Cir. 1993); Towe Antique Ford Foundation v. IRS, 791 F. Supp. 1450, 1453 (D. Mont. 1992) (listing objective factors to be considered), aff'd, 999 F.2d 1387 (9th Cir. 1993).

The alter ego doctrine has been applied by numerous courts to a variety of relationships that exist between a taxpayer and a corporation, partnership, trust, proprietorship or individual. *See, e.g.*, Ross Controls, Inc. v. United States, 164 B.R. 721 (successor corporations were alter egos of defunct corporate taxpayer); Today's Child Learning Center, Inc. v. United States, 40 F. Supp.2d 268, 273-274 (E.D. Pa. 1998) (second corporation was alter ego of taxpayer); United States v. Scherping, 187 F.3d at 801-804 (trusts were alter egos for taxpayers); F.P.P. Enterprises v. United States, 830 F.2d 114, 116-117 (8th Cir. 1987) (trusts were alter egos of taxpayers where the residence was conveyed by the taxpayers to the trust and the taxpayers continued to treat the residence as their own by (1) continuing to live in the residence, and (2) paying the insurance, taxes and mortgage on the residence); United States v. Geissler, 1993 WL 625535 (D. Idaho 1993) (trust was nominee/alter ego of taxpayers where: (1) taxpayers, as trustees maintain an absolute position over trust; (2) taxpayers need not consult anyone else in making decisions for the trust; (3) there is no provision imposing a fiduciary responsibility on trustee; (4) there was

no evidence of any consideration for transfer of property from taxpayers to trust; (5) and taxpayers continue to enjoy the benefits of the transferred property); United States v. Gerads, 1993 WL 114411 (D. Minn. 1993) (Trust was alter ego of taxpayers), aff'd, 999 F.2d 1255 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994)); Loving Saviour Church v. United States, 556 F. Supp. at 691-692 (D. S.D.), aff'd, 728 F.2d 1085 (8th Cir.) (unincorporated

association, Church, was alter ego of taxpayers); Grant Investment Fund v. IRS, 1 F.3d 1246 (Table), 1993 WL 269617 (9th Cir. 1993) (partnership was an alter ego of taxpayer where: (1) taxpayer manages entity and has complete control over it; (2) taxpayer uses his own assets and partnership assets interchangeably to pay debts; (3) investors in partnership are related to or controlled by taxpayer; (4) partnership made loans to taxpayer, such loans were approved by taxpayer as manager of partnership and taxpayer did not repay the loans; and (5) taxpayer used partnership to discharge personal obligations and for personal gain); Lemaster v. United States, 891 F.2d 115, 117-119 (6th Cir. 1989) (son held to be the alter ego of the taxpayer-father where: taxpayer's business ceased; a new business was started in the name of taxpayer's son; new business acquired assets of defunct business; new business was conducted in son's name, but taxpayer was given power of attorney and controlled the new business). [7]

Furthermore, if the alter ego or a nominee relationship otherwise exists between a taxpayer and another party or entity, the timing of when the tax liabilities arose is legally irrelevant. Stated differently, the timing of the creation of the trust or entity that is found to be an alter ego or nominee has no legal significance. *See* G.M. Leasing Corp. v. United States, 429 U.S. at 350-351 (property of taxpayer's nominee or alter ego is subject to tax lien and levy); In re Richards, 231 B.R. at 578; United States v. Landsberger, 1997 WL 792506 at * 5 (D. Ariz. 1997) (timing of creation of trust has "no import" if it is being used to avoid creditors) (citing G.M. Leasing, supra; F.P.P. Enters. v. United States, 830 F.2d at 118), aff'd, 172 F.3d 60 (9th Cir. 1999); accord United States v. Williams, 581 F. Supp. 756 (N.D. Ga.) (taxpayer's nominee (his mother) took title in real property before tax liabilities arose; however, because taxpayer was the true owner of the property, tax lien (which arose after property was purchased) attached and could be foreclosed on taxpayer's interest therein); cf. Keefer v. Commissioner, 1993 WL 221066 (Tax Ct. 1993) (trust was a sham even though tax liabilities arose after creation of trust).

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[7]The Court of Appeals for the Second Circuit applied the alter ego/nominee doctrine to a proprietorship stating:

> [I]t should be patently obvious that if [the taxpayer] dominated and controlled Lion Crest [the business] he should not be able to escape his tax liabilities simply because it was not incorporated, and he chose, instead, to constitute his daughter as his unincorporated nominee. In either event, "we must avoid an over-rigid 'preoccupation with questions of structure,'" *** and "apply the preexisting and over-arching principle that 'liability is imposed to reach an equitable result.'" ***

Libutti v. United States, 107 F.3d at 119 (citations omitted).

It is no defense to the application of the alter ego or nominee doctrine, that the alter ego or nominee, has a valid purpose, identity, or is otherwise valid under state law. *See* Avco Delta Corp. v. United States, 540 F.2d 258, 264 (7th Cir. 1976), cert. denied, 429 U.S. 1040 (1977); Valley

Finance, Inc. v. United States, 629 F.2d at 171-172; Wolfe v. United States, 798 F.2d at 1243 (citing
Nat'l Carbide Corp. v. Commissioner, 336 U.S. 422, 431-434 & n.13 (1949) and Harris v. United States, 764 F.2d 1126, 1128 (5th Cir. 1985)); In re Richards, 231 B.R. at 578-581.

III. Successor "Continuation" Doctrine

Where a taxpayer ceases to do business, a second or successor corporation may become liable for the taxes if the second corporation is the mere continuation of the taxpayer. Today's Child Learning Center, Inc., 40 F. Supp.2d 268, 272 (E.D. Pa. 1998); Ross Controls, Inc. v. United States, 160 B.R. 527, 532 (E.D. Pa. 1993); Ross Controls, Inc. v. United States, 164 B.R. 721, 726 (E.D. Pa. 1994) (citations omitted); *see also* Atlas Tool Co., Inc. v. Commissioner, 614 F.2d 860, 870-71 (3d Cir.), cert. denied sub nom., Schaffan v. Commissioner, 449 U.S. 836 (1980)[8].

To determine whether the second (successor) corporation is a mere continuation of the taxpayer (predecessor), the following factors have been found to be dispositive: (1) the second corporation continues the business or performs the same functions of the taxpayer; (2) the taxpayer's employees become the employees of the second corporation; and (3) the taxpayer and the second company are owned or controlled by the same individual. *See* Atlas Tool Co., Inc. v. Commissioner, 614 F.2d at 871; Ross Controls, Inc. v. United States, 160 B.R. at 532 (successor companies were in identical business as taxpayer, had the same employees, suppliers and customers, used the same equipment, and had same individual operating the businesses); Today's Child Learning Center v. United States, 40 F. Supp.2d at 272-273.

With respect to the transfer of assets between a predecessor and a successor corporation, the transfer may take any form (i.e., a purchase; a physical transfer, the use of the goodwill and other intangibles by the second company, etc.). *See* Stoumbos v. Kilimnik, 988 F.2d 949, 961 (9th Cir.) ("We conclude that the [successor] liability [would include] transfers other than straight forward purchases. Otherwise, unscrupulous business persons would be able to avoid successor liability and cheat creditors merely by changing the form of the transfer.") (citations omitted), cert. denied, 510 U.S. 867 (1993); accord Patin v. Thoroughbred Power Boats, Inc., 294

[8]The continuation doctrine is but one of several exceptions of corporate successor liability to the general rule that where one company sells or transfers its assets to another, the successor corporation is not liable for the debts of its predecessor. Philadelphia Electric Co. v. Hercules, 762 F.2d 303, 308-309 (3d Cir.), cert. denied, 474 U.S. 980 (1985). *See also* Chicago Truck Drivers v. Tasemkin, Inc., 59 F.3d 48, 49 (7th Cir. 1995) ("Most states have adopted exceptions to the general no liability rule that allow creditors to pursue the successor if the 'sale' is merely a merger or some other type of corporate reorganization that leaves real ownership unchanged.").

F.3d 640, 651, 652 (5th Cir. 2002) (The "successor liability doctrine does not require evidence of such a direct sale of assets from the predecessor to the successor for there to be a 'transfer of assets' between two corporations.") (collecting cases);[9] New York v. N. Storonske Cooperage Co., Inc., 174 B.R. 366, 376-377 (N.D.N.Y. 1994) (actual sale of assets is not required to impose successor liability; all that need be shown is that the successor has acquired assets, tangible or intangible, of a predecessor) (citations omitted). Moreover, every asset of a predecessor corporation need not be transferred to the successor in order for successor liability to attach. Bogart v. Phase II Machines, Inc., 817 F. Supp. 547, 548 (E.D. Pa. 1993) (intangible assets transferred to successor corporation was sufficient for successor liability under the continuation doctrine to attach); accord Ross Controls, Inc. v. United States, 164 B.R. at 727 n.6; *see also* Patin v. Thoroughbred Power Boats, Inc., 294 F.3d at 651 ("[T]he fact that the entirety of the predecessor's assets were not transferred to the successor does not render the mere continuation [doctrine] inapplicable.") (citation omitted). And, where the successor is servicing the customers of a predecessor, has benefitted from the predecessor's good will, where the predecessor stopped operating as a going concern, but the employees of the predecessor work for the successor, where the successor remains in the same building where the predecessor operated, and the same individuals operate the successor, the successor has acquired the assets of the predecessor. Bogart v. Phase II Pasta Machines, Inc., 817 F. Supp. at 549; accord New York v. N. Storonske Cooperage Co., Inc., 174 B.R. at 380-381 (finding that successor's knowledge of predecessor's customers effected a transfer of an intangible asset (customer list); successor's benefit from predecessors's good will was deemed a transfer of an asset; successor's employment of predecessor's employees was a transfer of an intangible asset since successor did not have to spend additional resources on employee training).

[9]Where the transfer of assets "involves an intermediary rather than a direct transfer from a predecessor to [a] successor [that fact] does not necessarily preclude application of the mere continuation exception, particularly when the intermediary is under the control of or otherwise tied to the principals in both the predecessor and successor corporations." Patin v. Thoroughbred Power Boats, Inc., 294 F.3d at 651 (citation omitted); *see also* Ross Controls, Inc. v. United States, 160 B.R. at 529-533 (third corporation was successor to taxpayer corporation); Ross Controls v. United States, 164 B.R. at 727 n.6.