

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CP RECYCLING OF NEBRASKA, INC;  
CP RECYCLING, INC; AND  
CP BIO ENERGY, INC.

Case No. 14-

Plaintiffs,

Honorable

v.

THE UNITED STATES OF AMERICA,

**COMPLAINT**

Defendant

---

Jason L. Byrne (P69148)  
Scott R. Carvo (P68717)  
Lindsay B. Hartman (P73909)  
Warner Norcross & Judd LLP  
*Attorneys for Plaintiffs*  
900 Fifth Third Center  
111 Lyon Street, NW  
Grand Rapids, MI 49503-2487  
616.752.2000

---

Plaintiffs, CP Recycling of Nebraska, Inc., CP Recycling, Inc., and CP Bio Energy, Inc., complain of United States of America, as acting through the Internal Revenue Service, (the “IRS”) as follows:

**INTRODUCTION**

The IRS has assessed tax liability of \$22,847,407.42 against CP Renewable Energy Marketers, LLC, a now-dissolved Michigan limited liability company (the “Taxpayer”) for unpaid taxes, not including interest and penalties. The IRS levied that assessment against the bank accounts of Plaintiffs, on the theory that Plaintiffs are the alter egos of Taxpayer. Each Plaintiff is a separate and distinct legal entity from the Taxpayer and not Taxpayer’s alter ego.

Pursuant to 26 U.S.C. § 7426, Plaintiffs bring this suit for the return of the property wrongfully levied upon.

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, CP Recycling of Nebraska, Inc. (“Nebraska Seed”) is a Michigan corporation with its principal place of business in Muskegon, Michigan.

2. Plaintiff, CP Recycling, Inc. (“Administrative Servicer”) is a Michigan corporation with its principal place of business in Muskegon, Michigan.

3. Plaintiff, CP Bio Energy, Inc. (“Bio Energy”) is a Michigan corporation with its principal place of business in Muskegon, Michigan.

4. Defendant, the United States of America has waived its sovereign immunity for this action under 26 U.S.C. § 7426.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this matter raises claims under the Internal Revenue Code, and, as such, arises under the laws of the United States. This Court also has subject matter jurisdiction under 26 U.S.C. § 7426(a)(1) because this matter is brought by Plaintiffs claiming their property was wrongfully levied upon by the IRS.

6. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because the Plaintiffs’ principal offices are within this District.

**GENERAL ALLEGATIONS**

7. Taxpayer was formed on July 2, 2007, for the principal purpose of participating in renewable energy initiatives being promoted through refundable tax credits under Section 6426(e) of the Internal Revenue Code (the “Tax Credits”).

8. Taxpayer's business was to obtain and provide substrates, the substance that permits enzymes to act in a reaction that eventually produces alternative fuel, to third parties who would then create the alternative fuel.

9. Taxpayer's business was primarily funded by the revenue from the Tax Credits.

10. Upon information and belief, following an examination of the tax returns of Taxpayer in 2011, an agent of the Internal Revenue Service ("IRS") concluded that Taxpayer was not eligible for Tax Credits.

11. Accordingly, the IRS assessed a total of \$22,847,407.42 in tax liability against Taxpayer for tax periods spanning from June 30, 2008 through March 31, 2011 (collectively referred to as the "Assessment").

12. Taxpayer ceased operations on August 24, 2011, and filed a certificate of dissolution on September 20, 2012.

13. Pursuant to 26 U.S.C. § 7426(c), the Assessment is conclusively presumed to be valid for purposes of adjudication of this action; Plaintiffs do not take a position regarding the validity of the Assessment.

14. The Administrative Servicer was formed on May 10, 1991, for the principal purpose of providing administrative and management services to companies engaged in recycling activities. Since 1991, the Administrative Servicer has provided administrative and management services to several different companies.

15. The Administrative Servicer provided administrative and management services to Taxpayer pursuant to a service contract.

16. The Administrative Servicer also provided administrative and management services to Nebraska Seed and Bio Fuel pursuant to service contracts.

17. The Administrative Servicer maintained, and continues to maintain, a bank account separate from Taxpayer and the other Plaintiffs (the “Administrative Servicer Account”).

18. The Administrative Servicer is not an “alter ego” of the Taxpayer, as evidenced by the following facts, among others:

a. The Administrative Servicer and Taxpayer are wholly separate legal entities;

b. The Administrative Servicer has respected corporate formalities as a separate, distinct, and independent legal entity;

c. There has been no commingling of assets between the Administrative Servicer and Taxpayer;

d. The Administrative Servicer is not a successor of Taxpayer and has no other corporate relationship to Taxpayer;

e. Taxpayer had no interest in the property of the Administrative Servicer; and

f. The Administrative Servicer has not acquired or received any of the assets of Taxpayer, except as payment for services performed.

19. Bio Energy was formed in 2011 as a limited liability company to commence a new business in the alternative biofuel industry.

20. Bio Energy subsequently converted from a limited liability company to a corporation pursuant to Michigan statute on March 14, 2012.

21. Unlike Taxpayer, Bio Energy did not, nor does it now, claim Tax Credits.

22. None of Bio Energy’s revenue was related, directly or indirectly, to Taxpayer.

23. Bio Energy maintained, and continues to maintain, a bank account separate from Taxpayer and the other Plaintiffs (the “Bio Energy Account”).

24. Bio Energy is not an “alter ego” of the Taxpayer, as evidenced by the following facts, among others:

- a. Bio Energy and Taxpayer are wholly separate legal entities;
- b. Bio Energy has respected corporate formalities as a separate, distinct, and independent legal entity;
- c. There has been no commingling of assets between Bio Energy and Taxpayer;
- d. Bio Energy is not a successor of Taxpayer and has no other corporate relationship to Taxpayer; and
- e. Taxpayer had no interest in the property of Bio Energy.

25. On February 16, 2012, Nebraska Seed was formed to engage in a new business in the alternative biofuel industry, specifically to purchase and then re-sell discarded corn seed.

26. Unlike Taxpayer, Nebraska Seed did not, nor does it now, claim Tax Credits.

27. None of Nebraska Seed’s revenue relates, directly or indirectly, to Taxpayer.

28. Nebraska Seed maintained, and continues to maintain, a bank account separate from Taxpayer and the other Plaintiffs (the “Nebraska Seed Account”).

29. Nebraska Seed is not an “alter ego” of the Taxpayer, as evidenced by the following facts, among others:

- a. Nebraska Seed and Taxpayer are wholly separate legal entities;
- b. Nebraska Seed has respected corporate formalities as a separate, distinct, and independent legal entity;

c. There has been no commingling of assets between Nebraska Seed and Taxpayer;

d. Nebraska Seed is not a successor of Taxpayer and has no other corporate relationship to Taxpayer; and

e. Taxpayer had no interest in the property of Nebraska Seed.

30. On March 18, 2014, the Office of Chief Counsel for the IRS issued a Memorandum regarding the legal authority of the IRS to record and serve an alter ego/nominee lien and levy (the “Memorandum”). A copy of the Memorandum is attached as **Exhibit A**.

31. The Memorandum alleges that each Plaintiff is an “alter-ego” of Taxpayer, and are therefore each liable for the Assessment.

32. The Memorandum concludes that the IRS could proceed with levy and seizure activity against the Plaintiffs to collect the Assessment, even though none of the Plaintiffs had the opportunity to review or contest the Memorandum.

33. The Memorandum’s conclusion was incorrect because Plaintiffs are not, nor have they ever been, “alter-egos” of Taxpayer and are therefore not liable for the Assessment.

34. On March 31, 2014, the IRS issued a notice of a federal tax lien for the Assessment to the Administrative Servicer “as alter ego” of Taxpayer. A copy of the lien is attached as **Exhibit B**.

35. On or about April 3, 2014, the IRS enforced the Assessment by levying against all of the funds held by the Administrative Servicer in the Administrative Servicer Account.

36. Upon information and belief, the IRS obtained all of the funds held in the Administrative Servicer Account as of the date of the levy action.

37. On March 31, 2014, the IRS issued a notice of a federal tax lien for the Assessment to Bio Energy “as alter ego” of Taxpayer. A copy of the lien is attached as **Exhibit C**.

38. On or about April 3, 2014, the IRS enforced the Assessment by levying against all of the funds held by Bio Energy in the Bio Energy Account.

39. Upon information and belief, the IRS obtained all of the funds held in the Bio Energy Account as of the date of the levy action.

40. On March 31, 2014, the IRS issued a notice of a federal tax lien for the Assessment to Nebraska Seed “as alter ego” of Taxpayer. A copy of the lien is attached as **Exhibit D**.

41. On or about April 3, 2014, the IRS enforced the Assessment by levying against all of the funds held by Nebraska Seed in the Nebraska Seed Account.

42. Upon information and belief, the IRS obtained all of the funds held in the Nebraska Seed Account as of the date of the levy action.

**COUNT I**  
**WRONGFUL LEVY**

43. Plaintiffs incorporate by reference the allegations in foregoing paragraphs.

44. Pursuant to 26 U.S.C. § 7426(a)(1), if a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States.

45. Pursuant to 26 U.S.C. §§ 6532(c) and 7426(i), a suit for return of property wrongfully levied upon shall be initiated within nine (9) months from the date of levy.

46. Less than nine (9) months have elapsed since the dates of levy.

47. At no time has the Administrative Servicer been an “alter ego” of Taxpayer.

48. The Administrative Servicer is not responsible for the tax liabilities of Taxpayer, including the Assessment.

49. The property levied by the IRS from the Administrative Servicer Account was owned by the Administrative Servicer at the time of levy, and not by Taxpayer.

50. The IRS wrongfully levied the property of the Administrative Servicer to satisfy the Assessment.

51. At no time has Bio Energy been an “alter ego” of Taxpayer.

52. Bio Energy is not responsible for the tax liabilities of Taxpayer, including the Assessment.

53. The property levied by the IRS from the Bio Energy Account was owned by Bio Energy at the time of levy, and not by Taxpayer.

54. The IRS wrongfully levied the property of Bio Energy to satisfy the Assessment.

55. At no time has Nebraska Seed been an “alter ego” of Taxpayer.

56. Nebraska Seed is not responsible for the tax liabilities of Taxpayer, including the Assessment.

57. The property levied by the IRS from the Nebraska Seed Account was owned by Nebraska Seed at the time of levy, and not by Taxpayer.

58. The IRS wrongfully levied the property of Nebraska Seed to satisfy the Assessment.



WHEREFORE, under 26 U.S.C. § 7426 Plaintiffs respectfully request the following relief:

A. A judgment for the amount of money wrongfully levied upon, plus interest and costs pursuant to 26 U.S.C. § 7426(b)(2)(B);

B. Attorney fees and costs as well as any other equitable or remedial relief that this Court deems appropriate.

WARNER NORCROSS & JUDD LLP

Dated: December 29, 2014

By           /s/ Jason L. Byrne            
Jason L. Byrne (P69148)  
Scott R. Carvo (P68717)  
Lindsay B. Hartman (P73909)  
Warner Norcross & Judd LLP  
*Attorneys for Plaintiff*  
900 Fifth Third Center  
111 Lyon Street, NW  
Grand Rapids, MI 49503-2487  
616.752.2000

11993505-1