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Hi—I wanted to get back to you on your question about when the underlying liability can be challenged in either a suit to reduce the liability/assessment to judgment or a lien foreclosure suit.

I looked at the O'Conner case and also thought Bailey v. U.S., 415 F.Supp. 1305 (D.N.J. 1976) was helpful. Essentially, while I also did not find many cases or other authority directly on point regarding raising liability challenges, I think that the analysis discussed in Bailey supports the conclusion that underlying liability can be at issue in either type of suit.

This comes from the broad grant of jurisdiction granted to district courts under sections 7402, 7403, and 28 USC 1340 and 1345, which give the district court jurisdiction to decide all issues necessary for the enforcement of the internal revenue laws and for the enforcement/collection of government liens. When the government brings suit to reduce liability to judgment or foreclose a lien, there is generally an assessment (though a suit to reduce liability to judgment can be brought without an assessment). There are several cases under sections 7401, 7402 and 7403 addressing the position that the assessment is given the presumption of correctness and the taxpayer then bears the burden of disputing its validity. So the district court would have jurisdiction to consider the liability, but the taxpayer would have to rebut that presumption of correctness of the assessment. So I think underlying liability can properly be considered by the district court in a judicial collection action brought by the government, but it may not be an actual issue in a lot of cases because of that presumption given to the correctness of the assessment, res judicata precluding dispute because the deficiency was already determined in a Tax Court case before it was assessed, etc.

Hope that helps. Let me know if I can be of further assistance.