



TAX PROCEDURE: THE FEDERAL PRIORITY STATUTE DOES NOT APPLY TO TAX LIENS

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The [Federal Priority Statute](#) gives the federal government priority of payment in certain insolvency matters, including receivership matters and estates that are insolvent. 31 U.S.C. § 3713(a). If creditors in a receivership or beneficiaries of an insolvent estate are paid before the United States, the receiver or executor is liable. 31 U.S.C. § 3713(b). In 1998, the Supreme Court ruled that the subsequent Federal Tax Lien Act trumped the priority statute, holding that a judgment creditor with a priority over a federal tax lien under Section 6323 of the Internal Revenue Code was entitled to be paid prior to the federal government. *United States v. Estate of Romani*, 523 U.S. 517, 532-34 (1998).

Despite that seemingly clear directive from the Supreme Court, a district court in Michigan was recently confronted with a dispute over the application of the Federal Priority Statute in a receivership case. [United States v. Krasicky](#), No. 15-11247, 2016 U.S. Dist. LEXIS 42057 (E.D. Mich. Mar. 30, 2016). Brian Krasicky was appointed as the receiver of Page Distribution, Inc. after it defaulted on a loan made by National City Bank. *Krasicky*, 2016 U.S. Dist. LEXIS 42057 at *2. The state court in Ohio that appointed him also held that the bank had a perfected security interest in all of the debtor's personal property and intangibles. *Id.* at *3. The dispute arose when taxes that accrued during the receivership went unpaid; the United States filed suit against Mr. Krasicky and the bank's successor in an effort to collect the unpaid taxes under the Federal Priority Statute. *Id.* at *4-*5.

The district court granted the defendants' motion to dismiss. First, the court concluded that the subsequent Federal Tax Lien Act applied because the government had a lien for the unpaid taxes, rejecting the government's argument that the act did not apply because the relevant taxes were "administrative expenses" incurred in the course of the receivership. In the court's view, the priority

statute was not applicable under *Romani* because Section 6323(h)(1) of the Code gave priority to a perfected security interest over a subsequent federal tax lien if the security interest is protected against a subsequent judgment creditor. *Id.* at *15-*17. Second, the *Krasicky* Court determined that the fact that the tax lien arose during a receivership had no bearing on its priority; all that mattered was that the claim for taxes had become a lien that fell within the scope of the priority scheme established under Section 6323 of the Code. *Id.* at *19-*21.

In light of *Romani*, the government's argument in this case seemed strained. The lesson appears to be that in a big enough case, the federal government may still endeavor to employ the Federal Priority Statute in an effort to get paid. Executors and other fiduciaries should plan accordingly.



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