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EXECUTORS AND ADMINISTRATORS-PRIORITY OF PAYMENT OF UNITED STATES CLAIMS

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EXECUTORS AND ADMINISTRATORS—PRIORITY OF PAYMENT OF UNITED STATES CLAIMS—When decedent died in 1940, his personal estate was consumed by the widow's exemption and expenses of administration, leaving only a one-sixth interest in certain real estate formerly owned by his deceased father. Proceedings to partition this property resulted in a sum of \$2,306.17 payable to decedent's widow, subject to the payment of his debts. The executors of one Davidson who had obtained a \$24,588.00 judgment against decedent in 1933 claimed the entire fund as did the United States under tax liens entered in 1940 and 1941 of \$2,202.89 and \$8,904.67. The government based its claim on section 3466 of the Revised Statutes¹ which provides that whenever any estate of a deceased debtor is insufficient to pay the debts, the amount due the United States shall be first satisfied. Section 3670 of the Internal Revenue Code makes the amount of the tax a lien on all a taxpayer's property when he refuses or neglects to pay the tax after demand has been made,² however the judgment creditor claimed a prior lien under section 3672 of the code³ which provides that the lien of the United States in such a case should not be valid against any judgment creditor until notice had been filed. *Held*, the judgment creditor is entitled to the fund. The court, pointing out that Congress had power to grant priority over federal liens to judgment lien creditors and to provide that first in lien

¹ Rev. Stat. (1878) § 3466, derived from Acts of Congress of 1797 and 1799, 31 U.S.C. (1940) § 191.

² Int. Rev. Code, § 3670, 53 Stat. L. 448 (1939), 26 U.S.C. (1940) § 3670.

³ Int. Rev. Code, § 3672, 56 Stat. L. 957 (1942), 26 U.S.C. (Supp. 1946) § 3672.

should be first in right, reasoned that section 3672 must be construed with section 3466 and shows an intent on the part of Congress to modify the broad language of that section. The court regarded the judgment lien as sufficiently perfected and specific to defeat the government's claim. *In re Meyer's Estate*, 159 Pa. Super. 296, 48 A. (2d) 210 (1946).

At common law the United States would be entitled to no special priority in settling claims against an insolvent debtor's estate,⁴ but in 1797, Congress passed the forerunner of section 3644⁵ which gave the government a priority of payment. In 1805 the United States Supreme Court sustained the constitutionality of the provision against charges that it constituted an unauthorized interference by the federal government with sovereign state power.⁶ Speaking through Chief Justice Marshall, the Court said, "The government is to pay the debt of the Union and must be authorized to use the means which appear to itself best eligible to effect that object. . . . This claim of priority on the part of the United States will, it has been said, interfere with the right of the state sovereignties respecting the dignity of debts. . . . But this is an objection to the Constitution itself. The mischief suggested, so far as it can really happen, is the necessary consequence of the supremacy of the laws of the United States on all subjects to which the legislative power of congress extends."⁷ The Court indicated early that the statute would receive a broad interpretation when it decided in 1817 that it entitled the government to preference in payment over a prior judgment creditor.⁸ Discussing this provision, the Court said, "these expressions are as general as any which could have been used, and exclude all debts due to individuals, whatever may be their dignity." It was this decision which the court in the principal case held section 3672 was intended to overcome, and its construction of that section is supported by several recent cases.⁹ Although section 3466 makes no exception to its requirement that "debts due the United States shall be first satisfied," an early decision held that a previously executed mortgage was entitled to preference over a government claim¹⁰ and later decisions seem to indicate that a specific and perfected lien will not be overcome by its provisions although there have been few square holdings to that effect because most of the

⁴ *Piedmont Corporation v. Gainesville & N.W. R.R. Co.*, (D.C. Ga. 1929) 30 F. (2d) 525; *Brent v. Bank*, 10 Pet. (35 U.S.) 596 (1836).

⁵ Act of March 3, 1797, c. 20, § 5, 1 Stat. L. 512 at 515 (1897).

⁶ *United States v. Fisher*, 2 Cranch (6 U.S.) 358 (1805). In 1941 the Pennsylvania Superior Court sustained the law against constitutional attack, *In re Kuhn's Estate*, 146 Pa. Super. 1, 21 A. (2d) 513 (1941).

⁷ *United States v. Fisher*, 2 Cranch (6 U.S.) 358 at 395, 396 (1805).

⁸ *Thellusson v. Smith*, 2 Wheat. (16 U.S.) 396 (1817). Recent cases to the same effect include: *In re Waxaid Co.*, (D.C. Md. 1943) 55 F. Supp. 289, and *In re Stiles' Estate*, 126 Misc. 715, 215 N.Y.S. 134 (1926).

⁹ *Manufacturer's Trust Co. v. Sobel*, 175 Misc. 1067, 26 N.Y.S. (2d) 145 (1940) (section 3672 can mean only that government claims must be subordinated to those of a prior judgment creditor); *MacKenzie v. United States*, (C.C.A. 9th, 1940) 109 F. (2d) 540; *United States v. Record Publishing Co.*, (D.C. Cal. 1945) 60 F. Supp. 194 (under 3672 a prior judgment creditor is entitled to priority over the United States' later lien for unemployment taxes).

¹⁰ *Conrad v. Atlantic Insurance Co.*, 1 Pet. (26 U.S.) 386 (1928). Mortgage liens took precedence over government tax liens subsequently recorded in *International Harvester Co. v. Dyer's Administrator*, 297 Ky. 55, 178 S.W. (2d) 966 (1944).

cases involving this claimed exception were decided on the ground that the lien was not specific or perfected.¹¹ The priority has been extended to debts due agencies of the government,¹² and it is not affected by the fact that the government remains aloof from probate proceedings.¹³ If the government does assert a claim, the probate court thereby acquires complete jurisdiction over its claim.¹⁴ It is generally held that administration expenses,¹⁵ funeral expenses,¹⁶ and allowances for support of widows and children¹⁷ are not subordinated to government claims by section 3466 because they are not "debts due from deceased," but rather charges against the estate imposed by law; however, state taxes¹⁸ and expenses of the last illness¹⁹ are ordinarily debts of the deceased and may not be paid until after the claims of the United States have been satisfied.

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¹¹ *United States v. Waddill, Holland & Flinn, Inc.*, 323 U.S. 353, 65 S. Ct. 304 (1945); *United States v. Texas*, 314 U.S. 480, 62 S. Ct. 350 (1941); *Spokane County v. United States*, 279 U.S. 80, 49 S. Ct. 321 (1929); *New York v. Maclay*, 288 U.S. 290, 53 S. Ct. 323 (1933); *United States v. Knott*, 298 U.S. 544, 56 S. Ct. 902 (1936); *In re Gruner*, 295 N.Y. 510, 68 N.E. (2d) 514 (1946).

¹² *Federal Reserve Bank of Dallas v. Smylie*, (Texas Civ. App. 1939) 134 S.W. (2d) 838 (claim for money loaned decedent through Farm Credit Administration).

¹³ *United States v. Fisher*, (D.C. Mich. 1945) 57 F. Supp. 410; *United States v. Pate*, (D.C. Ark. 1942) 47 F. Supp. 965.

¹⁴ *Seals v. United States*, (D.C. La. 1938) 24 F. Supp. 896; *United States v. Pate*, (D.C. Ark. 1942) 47 F. Supp. 965.

¹⁵ *Harrison v. Deutsch*, 294 Ill. App. 8, 13 N.E. (2d) 511 (1938).

¹⁶ *In re Fackler's Estate*, 12 Ohio Supp. 145 (1944); *Smolka v. James T. Chandler & Son*, 41 Del. 255, 20 A. (2d) 131 (1941); *In re Stiles' Estate*, 126 Misc. 715, 215 N.Y.S. 134 (1926).

¹⁷ *Postmaster General v. Robbins*, 1 Ware 163, Fed. Cas. 11,314 (1829). *In re Fackler's Estate*, 12 Ohio Supp. 145 (1944).

¹⁸ *In re Jacobs' Estate*, (Cal. App. 1944) 142 P. (2d) 454; *Lerman v. Lincoln Novelty Co.*, 130 N.J. Eq. 144, 21 A. (2d) 827 (1941); *United States v. Weisburn*, (D.C. Pa. 1943) 48 F. Supp. 393.

¹⁹ *In re Fackler's Estate*, 12 Ohio Supp. 145 (1944).