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Tax Lien Reaches Trust

A taxpayer discharged the liability for his federal income tax through a Chapter 7 bankruptcy case. However, prior to bankruptcy, all of the taxpayer's property became subject to a tax lien. The bankruptcy did not alter the lien, although discharge of the tax debt prevented the lien from attaching to any property received after bankruptcy.

At the time the tax lien attached, the taxpayer was the beneficiary of a trust from his grandmother, which did not permit creditors to recover from the trust assets, nor did it permit the taxpayer/beneficiary to withdraw funds.

A federal appeals court determined that, at the time the tax lien was created, it attached to future distributions from the trust. Thus, the tax lien attached to the post-bankruptcy distributions before those distributions were made, and the distributions were not considered post-bankruptcy property free from the IRS lien.

IRS v. Orr (In re Orr), 180 F.3d 656 (5th Cir. 1999).

Claim Against Guarantor Limited

Bankruptcy law limits the claim of a landlord against a tenant for future rent. Thus, in most cases where a debtor terminates a lease early, the landlord's claim for future rent due under the lease is capped at one year's rent or 15 percent of the remaining rent due under the lease, whichever is greater. A federal appeals court in California recently decided that this same cap applied to a guarantor of the lease who sought bankruptcy protection.

A single purpose limited partnership had leased a motel in San Diego. A general partner guaranteed the lease obligations. When the general partner sought bankruptcy protection, the landlord filed a claim for the full amount of future rent due under the lease and covered

by the guarantee. The court determined that the statutory limitation on the amount of the landlord's claim applied equally where that claim arose from a guarantee agreement rather than directly from the lease itself.

Arden v. Motel Partners (In re Arden), 176 F.3d 1226 (9th Cir. 1999)

Insurance Agent Keeps Commission

Even though a security agreement contains a provision giving the creditor a security interest in property acquired by the borrower in the future, the Bankruptcy Code cuts off the effect of the after acquired property clause for property obtained after the filing of the bankruptcy.

A Pennsylvania bankruptcy court recently applied this special bankruptcy power to renewal commissions earned by an insurance agent. The insurance agent had borrowed money from the bank and had given the bank a security interest in the renewal insurance commissions and any proceeds from the collateral.

The court found that the post-bankruptcy renewal commissions were not proceeds of collateral subject to the bank's security interest prior to the case, but rather were new, post-petition commissions insulated from the bank's security interest.

Franklin First Savings Bank v. Kizis (In re Kizis), 238 B.R. 89 (Bankr. M.D. Pa.1999).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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