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In *United States of America v. Estate of Robert Reitano*, Civil Action No. 12-11944-RWZ, 2014 U.S. Dist. LEXIS 123200 (D. Mass. Sept. 4, 2014), the federal district court issued a warning shot to estate fiduciaries who fail to pay the federal tax liabilities of the estates they are administering.

The decedent Robert Reitano owned stock in two closely held corporations, each of which owned a fishing boat. His assets consisted of little else besides the shares of stock. Marci McNicol, who owned stock in one of the corporations, was appointed the executrix of the decedent's estate. In her role as executrix, McNicol was given notice of the decedent's "significant" federal tax liabilities. McNicol did not pay these liabilities, but instead distributed the decedent's stock in the two corporations to herself.

After years of failed negotiations with McNicol, the IRS transferred the case to the Department of Justice, which brought suit on behalf of the Government against the estate and McNicol, individually and as executrix. Among other things, the Government sought to hold McNicol personally liable for a portion of the decedent's tax liabilities under the Federal Priority Statute, 31 U.S.C. 3713, which provides in part as follows: "[a] claim of the United States Government shall be paid first when . . . the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor[;]" and "[a] representative of a person or an estate . . . paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for the unpaid claims of the Government."

In order to make out a claim under the Federal Priority Statute, the Government must meet three elements: (1) a fiduciary of the debtor or the debtor's estate transferred assets of the debtor or the estate; (2) the debtor or the estate was insolvent at the time of the transfer, or rendered insolvent by the transfer; and (3) before making the transfer, the fiduciary knew of the tax debt or had notice of facts that would lead a reasonably prudent person to inquire about the existence of such a debt. McNicol did not dispute that these three elements were met. Rather, she argued that family allowances and funeral and administrative expenses take priority over the Government's claim. The Court did not address this argument, however, expressly taking no position on it, because McNicol did not use the decedent's assets to pay family allowances or funeral and administrative expenses. She simply transferred the shares of stock to herself without paying the known tax liabilities, and in doing so violated the Federal Priority Statute. She was held personally liable.

This update was authored by Mark Swirbalus and Marshall Senterfitt, attorneys in the firm's Probate & Fiduciary Litigation group. For questions or additional information on this topic, please contact Mark at mswirbalus@goulstonstorrs.com, Marshall at msenterfitt@goulstonstorrs.com, or any member of the Probate & Fiduciary Litigation group.

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