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protective role and to weigh Pillsbury's right to fair play against the possible benefits to be derived by sanctioning a liberal interpretation of what constitutes a legitimate exercise of the investigative powers of Congress. Electing to maintain an appearance of impartiality,[41] the balance was found in favor of the litigant.

Also exhibiting a protective attitude toward the agency, the Fifth Circuit emphasized that those exercising the judicial function must be free from powerful external influence. Unfettered responsibility for administration of the Clayton Act within the policy standards set forth by the legislature has been delegated to the FTC by Congress.[42] It is important to avoid the appearance that a change desired by Congress in agency treatment of particular issues may relate to a pending case rather than to a rule used in applying statutory language. *Pillsbury* sets a standard to be followed in this regard and tends to produce a behavior relative to administrative agencies which will instill public confidence in the administration of the law and will thereby strengthen the administrative process.[43]

Charles D. Tuttle

Denial of Priority and Pro Rata Sharing to Tax Claims Under Section 64 of the Bankruptcy Act

An individual sold all assets of a personally owned California business and terminated the venture, leaving outstanding a county ad valorem tax assessment on his personal property. He set up an unrelated business in Houston, Texas, which did not prosper. More than six months after moving from California, he was adjudged bankrupt. The state of California asserted a timely claim for priority on the tax debt under section 64(a)(4) of the Bankruptcy Act,[1] and in the alternative sought to enter the bankruptcy proceedings as a general creditor. The referee found that none of the assets upon which the tax was levied had entered the estate of the bankrupt, nor were any of the funds from the sale thereof directly traceable to this estate; therefore he disallowed the entire claim. *Held, affirmed:* Under the proviso to section 64(a)(4) of the act a state is not entitled to a pri-

[41] It is most important that the law appear to be justly administered in order to inspire public confidence and strengthen the administrative process. See Peck, *Regulation and Control of Ex Parte Communications With Administrative Agencies*, 76 HARV. L. REV. 233, 273-74 (1962).

[42] See note 36 *supra*.

[43] See Peck, *Regulation and Control of Ex Parte Communications With Administrative Agencies*, 76 HARV. L. REV. 233, 274 (1962).

[1] 11 U.S.C.A. § 104 (1966).

ority for personal property tax claims when the bankrupt estate has no interest in the property on which the tax was levied; further, a state is not entitled to a pro rata share of the general hotchpot where the claim is covered by the proviso. *In re Nussbaum*, 257 F. Supp. 498 (S.D. Tex. 1966).

I. Treatment of Tax Claims Under the Bankruptcy Act

The Bankruptcy Act declares that certain unsecured claims are entitled to full payment prior to distribution of the estate among the general creditors, even to the exclusion of the latter. Expenses of administration, wage claims, expenses of creditors in certain instances, and taxes of both the United States, the states, and their subdivisions are entitled to priority under section 64(a) of the act.[2] Claimants for such priorities must meet all requirements of the act.[3] Priority claims are subordinate to the claims of secured creditors.[4]

The statutory requirements for the establishment of a priority claim under section 64(a)(4) of the act are (1) that the claim must represent a tax[5] (2) legally due and owing by the bankrupt at the time the petition is filed.[6] In addition, (3) the claim must not have been released by a discharge in bankruptcy.[7] Finally, (4) it must accord with the standards established by the proviso.[8] The term "tax" has been interpreted broadly and

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[2] While priority claims are ranked in terms of payment between the various classes, unsecured tax claims are not ranked among the various governmental units, but are payable equally in priority. Thus, for example, the claims of the states are not superior to those of counties or cities. See *Note, Insolvency—Equal Priority of State Unemployment Compensation Taxes and Federal Taxes*, 43 Colum. L. Rev. 239 (1943). See also note 21 *infra*.

[3] 3 Collier, Bankruptcy § 64.401[3] (14th ed. Moore 1966) (hereinafter cited as Collier).

[4] Collier § 64.02[2] n.13. *Cf.*, *In re* Quaker City Uniform Co., 238 F.2d 155 (3d Cir. 1956), 35 Temple L.Q. 196 (1958) (valid chattel mortgage superior to landlord's claim under § 64(a)(5)).

Claims entitled to priority may also be protected by a lien. See especially the landmark case of City of Richmond v. Bird, 249 U.S. 174 (1918) (section 64 inapplicable to tax claims secured by valid liens); 3 Collier § 64.403 n.13. Questions of tax liens often arise in connection with claims of the federal government under the Internal Revenue Code. Section 6321 of the 1954 Code creates a statutory lien on all property and property rights of the bankrupt in favor of the United States to secure tax claims. On this subject, see Comment, *Avoiding Federal Tax Liens in Bankruptcy*, 39 Texas L. Rev. 616 (1961).

A priority should be distinguished from a preference. A preference is described by § 60 of the act, while a priority derives its status from § 64. Preferences are those acts of allegedly insolvent individuals which attempt to subordinate the claim of one or more creditors to those of others having no better right, usually by assigning specific property, which should be available to all creditors equally, to specific creditors for the satisfaction of unsecured antecedent debts.

[5] 3 Collier § 64.404; 2 Remington, Bankruptcy § 797 (Henderson ed. 1956) (hereinafter cited as Remington).

[6] 3 Collier § 64.405; 2 Remington § 797; Note, *Bankruptcy—The Effect Given Courts' Interpretations of State Taxing Statutes Under Section 64(a)(4) of the Bankruptcy Act: The Construction Under Section 64(a)(4) of a State Statute Providing for a Tax Alternative in Nature*, 8 Ohio St. L.J. 93 (1941); Note, *Tax Claims in Bankrupecy*, 29 Va. L. Rev. 206, 208-10 (1942).

[7] Bankruptcy Act, § 64(a)(4), 11 U.S.C.A. § 104 (1966).

[8] The proviso reads as follows: "*And provided further*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court."

includes real and personal property, excise, franchise, sales, and workmen's compensation taxes.[9] The courts have noted, however, that state classification is not necessarily determinative.[10] The second requirement, that the tax be legally due and owing by the bankrupt at the time the petition in bankruptcy is filed, has led to the disallowance of taxes assessed later than the date of filing, and to the disallowance of tax claims which are not the personal debts of the bankrupt.[11]

The third requirement for priority treatment was added by 1966 amendments to the act, providing for the discharge of certain tax claims and providing further that allowable claims must not have been discharged prior to the proceeding wherein they are asserted. The fourth limitation upon the establishment of priority claims is found in the proviso to section 64(a)(4) of the act. The statute presently reads:

> The debts to have priority . . . shall be . . . (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy: . . . provided . . . that no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court.[12]

The proviso has been interpreted to prohibit using the funds of the general estate to pay priority claims for taxes assessed against property which is not available to the trustee for distribution.[13]

In *Nussbaum* the personal property tax of California was assessed upon the tangible personal assets of the bankrupt's California business—furniture, fixtures, and inventory.[14] There was no question of its meeting the requirement that the claim must represent a tax. The tax claim met the second requirement because it was legally due and owing prior to the filing of the petition, and, according to the applicable California statute, was a personal debt of the bankrupt.[15] In addition, the claim had not been dis-

[9] 3 COLLIER § 64.404[2]; 6 REMINGTON 388-401.

[10] *In re* Mid America Co., 31 F. Supp. 601, 604 (S.D. Ill. 1939), and cases cited therein. *But cf., In re* Ashland Emery & Corundum Co., 229 Fed. 829 (D. Mass. 1916). A recent exposition of the view that state characterization is not controlling is Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964). See also Note, *Bankruptcy—The Effect Given State Taxing Statutes Under Section 64(a)(4) of the Bankruptcy Act, supra* note 6.

[11] 3 COLLIER § 64.405.

[12] Section 64(a) of the Bankruptcy Act, 11 U.S.C.A. § 104, as amended, 1966. When *Nussbaum* was decided the statute read as follows, although the court was careful to point out that the 1966 amendment had no effect on the issue of that case: "The debts to have priority . . . shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: Provided, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court."

[13] See, *e.g.*, Waco v. Bryan, 127 Fed. 79 (5th Cir. 1904); Chattanooga v. Hill, 139 Fed. 600 (6th Cir. 1905). *But cf., In re* Veitch, 101 Fed. 251 (D. Conn. 1900) (in the absence of a lien the tax claim is not allowable).

[14] 257 F. Supp. 498, 499 (S.D. Tex. 1966).

[15] Revenue & Taxation § 2186, DEERING'S CAL. CODE ANN.

charged by prior bankruptcy proceedings. However, a more difficult problem was to meet the requirements of the proviso.

II. The Priority Claim

Origin of Priority Status Before Nussbaum no reported case had decided the precise issue of whether a state tax claim was allowable if the taxed property had been sold and the particular business discontinued. Analogies, however, could be drawn. For example, in cases involving property exempt from creditors under state law tax claims had been disallowed under the proviso on the theory that such property never entered the bankrupt estate.[16] And when non-exempt property actually entered the estate of a bankrupt but was released therefrom because it was encumbered in excess of its value, the state was barred from seeking priority treatment for tax claims from the general estate.[17]

Because of the lack of precedent, the court examined the origin and development of the statutory provision.[18] The court found that legislative history supports the view that both exempt and abandoned property were contemplated by Congress when the proviso was added. While priority treatment was available as early as the act of 1867,[19] it was not until the act of 1898 that the guarantee emerged in substantially the present form. There Congress declared that "the court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment to creditors."[20] As a result of the interpretations of this section, questions as to the fairness of some payments arose.[21] These objections came when the trustee was required to pay taxes assessed against property which was not subject to the court's jurisdiction and formed no part of the bankrupt estate. Although the United States Supreme Court had declared that "exempted property

[16] Waco v. Bryan, 127 Fed. 79 (5th Cir. 1904). *But see* the exception of spendthrift trusts in Leuschner v. First Western Bank & Trust Co., 261 F.2d 705 (9th Cir. 1958), and cases cited at 707 n.4.

[17] 3 COLLIER § 64.402[2].

[18] 257 F. Supp. at 499, 500. Collier states: "[T]he provision evidently contemplated abandonment of the bankrupt's interest by the trustee, coupled with a bar against any priority payment of a tax in such a case." 3 COLLIER § 64.402[2].

[19] Act of March 2, 1867, 14 Stat. 530. Moreau has noted that as far back as 1789 the First Congress provided for priority payment of taxes due the United States, but this was not a comprehensive part of the Bankruptcy Act until 1867. Moreau, *Government Claims in Bankruptcy and Reorganization Proceedings*, 9 J.B.A. KAN. 150 (1940). The origin of priority treatment for tax claims has been said to be the early common law concept of sovereignty. Note, *Tax Claims in Bankruptcy*, 29 VA. L. REV. 206, 206-07 (1942).

[20] 30 Stat. 563 (1898).

[21] There was also some question as to the relative status of tax claims in relation to other claims entitled to priority. One view was that the court would give priority to taxes over all other priority claims; another was that tax claims would be paid only after all other priority claims; and the third view was that taxes would rank only ahead of wages in priority. The question was settled by the 1926 statute, which gave taxes fourth priority. See 3 COLLIER § 64.402[1] n.2.

constitutes no part of the assets in bankruptcy,"[22] and was therefore not subject to distribution by the trustee, he was nevertheless obliged to pay tax claims against this property from the other property of the bankrupt estate.[23] In addition, there were often tax claims in excess of the equity of the bankrupt in specific non-exempt property. These claims, too, were entitled to full payment from the general hotchpot.[24] In such cases the property was often so heavily encumbered that the estate realized little or nothing therefrom and yet was liable for taxes which otherwise might have been paid by lienholders.[25]

To correct these abuses, the statute was amended in 1926 to provide that "no order shall be made for the payment of a tax assessed against the real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein."[26] As one commentator noted at the time, "the priority created in favor of real estate taxes is limited in effect to a lien upon the bankrupt's equity in the property in question."[27] Shortly after the 1926 amendment the Fifth Circuit declared in *Fakes v. Girand* that "under the . . . proviso . . . it is clear that the trustee cannot be required to pay taxes assessed against property set aside to the bankrupt as exempt."[28] In that case the court refused to allow a claim for taxes on homestead property because of the proviso.

In the Chandler Act of 1938 the proviso was retained in substantially the same form, the act merely changing the words "the real estate" to "any property," and thus including personal as well as real property taxes within

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[22] Lockwood v. Exchange Bank, 190 U.S. 294, 299 (1903).

[23] Waco v. Bryan, 127 Fed. 79 (5th Cir. 1904); *In re* Tilden, 91 Fed. 500 (S.D. Iowa 1899).

[24] Chattanooga v. Hill, 139 Fed. 600 (6th Cir. 1905).

[25] The case of *In re* Prince & Walter, 131 Fed. 546 (D. Penn. 1904), is indicative of the problem. Here real property taxes, which under state law constituted a lien on the realty, were ordered paid from the estate prior to paying general, unsecured creditors. The case of Waco v. Bryan, 127 Fed. 79 (5th Cir. 1904), reached a perhaps even more inequitable result. Here the property was totally excluded from the estate, and, although the city had a lien against the property itself, the tax claim was ordered paid from the general estate. The inequities of the situation were compounded by the fact that lienholders who paid tax claims against property in order to protect their lien were not subrogated to the rights of the state in bankrupcy proceedings. *In re* Halsey Elec. Generator Co., 175 Fed. 825 (D.N.J. 1909). *But cf., In re Bennett,* 153 Fed. 673 (6th Cir. 1907) (subrogation allowed). However, the inequitable result in these cases was clearly correct under the contemporaneous law. As one judge pointed out:

> On the plain construction of section 64a of the present law, and particularly in the light of past legislation on the subject, there is no room to hold that it makes any difference whatever, as to the right of priority, whether property on which taxes were assessed ever came into the hands of the trustee. The test is given in the statute: Are the taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality claiming the same? If yea, they are entitled to be paid in advance of the payment of dividends to creditors, for thus saith the law.

Waco v. Bryan, 127 Fed. 79, 81 (5th Cir. 1904).

[26] Act of May 27, 1926, 44 Stat. 667.

[27] Colin, *An Analysis of the 1926 Amendments to the Bankruptcy Act,* 26 COLUM. L. REV. 789, 803 (1926).

[28] Fakes v. Girand, 23 F.2d 90 (5th Cir. 1927).

the proviso.[29] Problems of interpretation have been hampered by the fact that the authors of this change referred to the new provision as "re-enacting" the proviso rather than changing its meaning, leaving no indication of intent except that furnished by the statute itself.[30] It is clear, however, that excise, franchise, and similar intangible taxes were not covered by the proviso.[31] If covered, then such taxes would be excluded from priority in every case[32] because they never consist of "property" in the bankrupt estate.

Because of the ready alienability of personal property, however, taxes on such property often assume some of the characteristics of excise or sales taxes. Immediately after the 1938 amendment two cases arose where the referees were called upon to determine whether personal property taxes were allowable as priorities if the property were sold prior to bankruptcy.[33] In both cases the referees agreed that "the amendment of 1938 has extended the proviso formerly applicable only to real estate taxes, to include taxes upon personal property. In other words . . . no order for [priority] payment of taxes assessed against property of the bankrupt will be made unless *that property* comes into the estate and then only up to the value of that property."[34] This view was in line with that expressed by a group of referees in bankruptcy about the same time.[35]

In *Nussbaum* the court noted that there was an exception to this doctrine. In the case of *In the Matter of Raflowitz* a district court, in a well reasoned opinion, declared that a personal property tax upon inventory was entitled to a priority, although some of the goods had been sold, and although the state was unable to trace any funds from these sales.[36] The decision was predicated primarily upon an equitable reading of the statute and a presumption that the funds were later incorporated in the business. In light of the legislative and judicial development of the proviso, however, *Raflowitz* must represent a judicially declared exception to the plain words of the statute.

Determination of the Priority Claim In *Nussbaum* the court explicitly refused to extend the exception of *Raflowitz* and instead returned to the historical interpretation of the proviso. While the authors of the statute probably never considered the problem of *Nussbaum*, it appears that the

[29] 6 REMINGTON § 2842.

[30] 3 COLLIER § 64.406 n.2.

[31] See *In re* Wiloil Corp., 50 F. Supp. 535 (W.D. Pa. 1941) (compares property and excise taxes, and holds that a specific motor fuels tax is not covered by the proviso).

[32] As to treatment of these claims see generally Note, *State Priority to Sales Tax Proceeds in Bankruptcy*, 40 IND. L.J. 233 (1965).

[33] *In re* Stevens, 45 Am. Bankr. R. (n.s.) 44 (Ref. Kan. 1939); *In re* Summers Co., 45 Am. Bankr. R. (n.s.) 123 (Ref. Ohio 1939).

[34] *In re* Summers Co., 45 Am. Bankr. R. (n..s) 123, 130 (Ref. Ohio 1939).

[35] Kruse, *Tax Claims, Wage Claims and Inheritance*, 15 REF. J. 64, 67 (1941).

[36] 37 F. Supp. 202 (D. Conn. 1941), 55 HARV. L. REV. 137.

opinion is correct insofar as it refused priority treatment to the claim. As the court noted, the statutory language is clear, and, in the absence of legislative history to the contrary, it should be given its literal meaning: When the property upon which the tax is assessed does not enter the bankrupt estate, the trustee is not required to give priority to the claim. Although the *Raflowitz* exception is closely analogous, the court was careful to point out that *Raflowitz* is clearly a judicial modification of plain statutory language. *Nussbaum* also involves factual dissimilarities. Here the tax was assessed upon the inventory and capital assets of the business—furniture and fixtures—which were sold at the time the entire business was liquidated.[37] After the passage of several months and following development and failure of another business, the funds were no longer logically represented by the assets of the bankrupt. It does not seem that more recent claims against the particular business involved should be subordinated to overdue, personal tax obligations of the bankrupt. In cases such as *Nussbaum* the analogies of exempt and abandoned property relied upon by the court seem more appropriate, especially in view of the clear wording of the statute and the early referee interpretations.

III. Alternative Ground: Share in the General Distribution

The state of California did not limit its attempt to participate in distribution to a claim for priority. As an alternative ground, the state sought to enter court as a general creditor, receiving only that proportionate share of the estate as its claim bore to the totality of the debts. Again, however, the court disallowed the claim, holding that "ad valorem taxes owed by the bankrupt are to be paid out of the bankrupt estate only if the taxed property comes into the hands of the trustee or if the bankrupt estate has an interest in the taxed property which is not abandoned or exempt."[38]

In order for an unsecured claim to be paid in bankruptcy it must be (1) provable,[39] and (2) personally owed by the bankrupt.[40] In some early cases creditors contended that tax claims were not strictly debts under section 63 of the act, but were quasi-contractual obligations and therefore not provable in bankruptcy proceedings.[41] However, this contention was uniformly rejected, and the decisions held that taxes are "provable" within the meaning of the statute.[42] As Remington points out, "provability may

[37] In *Nussbaum* it appears from the opinion that if the funds had been traceable priority status would have been allowed to the amount of the funds traced. 257 F. Supp. 498, 501 (S.D. Tex. 1966). On the subject of tracing funds in relation to intangible taxes such as sales taxes, see 42 Ind. L.J. 233, 243 (1965).

[38] 257 F. Supp. at 501.

[39] 2 Remington § 797.

[40] 3 Collier § 63.03.

[41] See, *e.g.*, United States v. Bernstein, 16 F.2d 233, 234-35 (8th Cir. 1926), where the court examines most early cases on this point.

[42] *Ibid*; *In re* Kootenai Motor Co., 41 F.2d 399 (N.D. Idaho 1930).

be said to extend, generally, to every tax valid under the law imposing it.'"[43] In addition, under California law personal property assessments are the personal debts of the owner of the property and therefore are allowable under the requirements of the statute.[44]

Nevertheless, authority existing prior to *Nussbaum* was in conflict as to whether the tax claim was entitled to a pro rata share if disallowed as a priority. On one hand the referee's decision in *In re Stevens* held that personal property taxes were entitled neither to priority nor to pro rata sharing except to the extent of the interest of the estate in the property taxed.[45] In *In re Summers Co.*, however, another referee held that such taxes, while not entitled to priority treatment, were nevertheless entitled to share in general dividends under section 63 of the act.[46]

The basis for the decision in the *Stevens* case rests on the fact that the proviso is unlimited in language: "*No* order shall be made." Thus, in the view of the referee, the act should be applied literally. In the *Summers* case, however, the referee pointed out that this language must be read in context, and inasmuch as it is included in a section entitled "*Debts Which Have Priority*," he reasoned that the proviso applied only to priority claims, not to attempts to secure general treatment for tax claims under a different section of the act.[47] He pointed out that an ordinary wage claimant, normally entitled to priority, could also qualify as a general creditor.[48] In addition, the referee noted that unless such claims were allowed, there would result a hiatus in the statute—that tax claims could be used to prove insolvency but would not be entitled to share in the dividends.[49] In *Nussbaum* the court rejected the *Summers* view, preferring the position of the referee in *Stevens*. In doing so, it followed the course set by the Fifth Circuit in *Fakes v. Girand*, where the court refused to allow a tax claim altogether, without discussing the status of the state as a general creditor.[50] In *Nussbaum* the court reasoned:

> Property which does not enter the bankrupt estate does not become a part of the estate and is of no value to the estate or to the creditors of the estate. The burden of paying taxes levied upon such property should fall upon the bankrupt or upon the purchasers who took the property subject to the taxes then due and owing; it should not fall upon creditors of the estate

[43] 2 REMINGTON § 797, n.12.

[44] *Supra* note 15. While the tax is a personal debt of the bankrupt it would also constitute a lien on any real property owned by the bankrupt in California. Revenue & Taxation §§ 2189, 2189.3, DEERING'S CAL. CODE ANN. In this case there was no lien on the personalty involved.

[45] 45 Am. Bankr. R. (n.s.) 44 (Ref. Kan. 1939).

[46] 45 Am. Bankr. R. (n.s.) 123 (Ref. Ohio 1939).

[47] *Id.* at 130.

[48] *Id.* at 131. But it should be noted that there is no proviso to § 64(a)(2) of the act (wage claims).

[49] *Id.* at 133-34; see, *e.g.*, *In re* Kootenai Motor Co., 41 F.2d 399 (N.D. Idaho 1930).

[50] 23 F.2d 90 (5th Cir. 1927).

who have no interest in the property and who will not benefit from the payment of the tax claim.[51]

When emphasizing the purchaser as a potential obligor on the tax claim, however, some importance must be attached to the question of whether the tax claim has the nature of an in personam or an in rem obligation. If the latter, the state should clearly not be allowed to share in the general distribution—its appropriate remedy would be to pursue the property itself. This was the situation in *Fakes*. If, however, as is the case in *Nussbaum*, the obligation is a personal one of the bankrupt, it seems that equitably the state should be allowed to enter *in pari materia* with other general unsecured creditors, because the state is itself an unsecured creditor.

Since *Nussbaum* an additional argument for the allowance of tax claims has been created by amendment to the statute. Prior to the 1966 amendments tax claims were not discharged by bankruptcy, and after these proceedings the bankrupt remained personally liable. Under the 1966 amendments, however, certain tax claims are discharged by bankruptcy proceedings even when not fully satisfied.[52] Although the tax due in *Nussbaum* would not have been discharged,[53] in those cases where the tax claim is discharged by bankruptcy proceedings it seems that the state should be allowed to enter the proceedings and present its claim as a general creditor.

IV. Conclusions

In the face of the clear language of the statute and the many interpretations of the proviso, the court in *Nussbaum* was correct in disallowing this claim priority status. Less clear is the second issue. The decision in the *Summers* case seems more persuasive, especially when coupled with the effect of the 1966 amendments. Were the obligation protected by an encumbrance upon the sold property, this would not be the case; but the obligation in *Nussbaum* was merely a personal obligation of the bankrupt, not coupled with any right in the property itself. In view of recent amendments to the statute other decisions should be more concerned with this distinction. For the present, however, *Nussbaum* will help to fill the need for authority in this area of the law. *W. Richard Jones*

[51] 257 F. Supp. at 501.

[52] Bankruptcy Act § 17, 11 U.S.C.A. § 35 (1938) (debts not affected by a discharge) was amended effective October 1, 1966. It presently reads, in part:

> (a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: *Provided, however* . . . . But a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to him under this title: *And provided further*, That a discharge in bankruptcy shall not release or affect any tax lien.

[53] Because it became due and owing to the state within 3 years preceding bankruptcy. See also note 12 *supra*.