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Update on Corporate Bankruptcy Tax Refund Litigation

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The bankruptcy trustee of a bank holding company was not entitled to a consolidated corporate tax refund when a bank subsidiary had incurred losses generating the refund, held the U.S. Court of Appeals for the Tenth Circuit on May 26, 2020. *Rodriguez v. FDIC (In re United Western Bancorp, Inc.)*. On remand from the U.S. Supreme Court, the Tenth Circuit, as directed, applied “Colorado law to resolve” the question of “who owns the federal tax refund.” The court had initially held for the FDIC, the bank subsidiary’s receiver, but, according to the Supreme Court, mistakenly failed to apply state law and relied instead on a Ninth Circuit decision, *In re Bob Richards Chrysler Plymouth Corp.* The Supreme Court rejected *Bob Richards* as inappropriate federal “common lawmaking,” and remanded the case back to the Tenth Circuit. In this article, of counsel Michael Cook discusses the court’s decision and analyzes its relevance on tax sharing agreements.

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