

## ALERTS

## Secured Lender Primes Earlier Federal Tax Lien in Fourth Circuit Split Decision

**November 19, 2014**

The U.S. Court of Appeals for the Fourth Circuit, on Oct. 31, 2014, held in a split decision that a lender's unrecorded lien primed an earlier unrecorded federal tax lien on a Chapter 11 debtor's real property. *In re Restivo Auto Body, Inc.*, 2014 WL 5488166 (4th Cir. Oct. 31, 2014) (2-1). Relying on "Maryland[']s common law ... doctrine of equitable conversion," the court reasoned that the lender was entitled "to the same protections as a [good faith] purchaser for value who takes title free and clear of all subsequent liens regardless of recordation." The dissent, however, argued that federal law governs "the priority of federal tax liens" and that the debtor taxpayer had no "unencumbered title to ... give" the lender. As a result, in the dissent's view, the lender's asserted liens were junior to the earlier federal tax lien and the majority erred by applying "state law to determine the priority of the IRS's tax lien to the property." The priority of a federal tax lien, the dissent insisted, "is determined solely by federal law." The case reassures secured lenders unaware of a borrower's preexisting tax lien, for it protects them against the government's nondisclosure.

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