

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-1068
R&E CORPORATION and	:	
COMMONWEALTH OF PENNSYLVANIA	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

YOHN, J. August , 1999

The United States brought this foreclosure action against a liquor licence owned by R & E Corporation (“R & E”). The United States named Pennsylvania’s Bureau of Employer Tax Operations (“BETO”) as a party possibly claiming rights to the liquor license. On November 2, 1998, default was entered against R & E. Shortly thereafter, the court approved a consent decree allowing the sale of the license. This sale occurred on May 11, 1999, and yielded proceeds in the amount of \$6,100.00.¹ Both the United States and BETO now assert that they are entitled to these proceeds. The United States claims that its tax liens were perfected on the date of assessment and have priority over all but one of the Commonwealth’s liens. See Pl.’s Trial Brief at 16-17. BETO maintains that the Tax Injunction Act divests the court of jurisdiction to hear this case. Substantively, BETO argues that it is a judgment lien creditor and therefore, under 26 U.S.C. § 6323 the IRS’s liens can have priority only from the date they were recorded. See Def.’s Trial Mem. at 3-4. Alternatively, BETO contends that the United States has liens only on

¹ The Internal Revenue Service (“IRS”) deposited the proceeds from the sale with the Clerk of Court on June 1, 1999.

the amount of the proceeds that exceed R & E's outstanding state tax debt. Defendant bases this claim on the theory that the provision in the Pennsylvania Liquor Code which makes the right to transfer, sell, or renew a liquor license contingent upon payment of state taxes, limits R & E's, and therefore the IRS's, interest in the license to something less than its entire value.

The court held oral argument on these issues. Following this hearing, the parties submitted joint findings of all the facts relevant to a determination of the parties' respective rights in the proceeds. These findings are incorporated herein as follows.

I. FINDINGS OF FACT

1. R & E Corporation t/a Living Room Lounge is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. The Pennsylvania Liquor Control Board (PLCB) granted a liquor license # R6957 to R & E, which operated a liquor establishment by virtue of that license.

3. Between 1989 and 1996, the Internal Revenue Service (IRS) made various assessments against R & E for unpaid federal employment taxes (withheld income taxes and FICA taxes). These assessments plus statutory additions are summarized as follows:

Tax Period	Date of Assessment	Amount of Assessment	Unpaid Balance	Statutory Additions
06/30/88	09/18/89	\$3,060.62	\$966.48	\$1,228.97
09/30/88	09/18/89	\$3,135.27	\$1,380.83	\$1,936.76
12/31/88	09/18/89	\$3,209.92	\$1,449.43	\$2,038.38
09/30/89	07/15/96	\$698.88	\$1,704.10	\$421.02
12/31/89	07/15/96	\$698.88	\$1,661.58	\$380.50
03/31/90	07/15/96	\$709.80	\$1,664.59	\$406.36
06/30/90	07/15/96	\$709.80	\$1,603.71	\$396.24
09/30/90	07/15/96	\$709.80	\$1,563.94	\$386.37
03/31/91	07/08/96	\$596.70	\$1,274.37	\$317.62
09/30/91	06/15/92	\$865.42	\$337.21	\$860.49

12/31/91	06/15/92	\$865.42	\$1,075.38	\$979.05
03/31/92	11/30/92	\$879.08	\$1,040.59	\$1,551.76
09/30/92	12/14/92	\$890.78	\$1,915.69	\$1,732.46
12/31/92	07/15/96	\$892.72	\$1,634.47	\$439.53
03/31/93	06/24/96	\$596.70	\$1,107.45	\$311.86
09/30/93	06/24/96	\$892.72	\$1,509.20	\$462.65
12/31/93	06/24/96	\$892.72	\$1,471.89	\$466.65
03/31/94	06/24/96	\$892.72	\$1,435.77	\$470.83
06/30/94	06/24/96	\$892.72	\$1,398.22	\$474.73
09/30/94	10/14/96	\$892.72	\$1,397.56	\$436.16
12/31/94	06/24/96	\$892.72	\$1,316.05	\$480.69
03/31/95	06/24/96	\$446.36	\$637.37	\$241.81
06/30/95	07/01/96	\$446.36	\$619.25	\$240.46
09/30/95	06/24/96	\$446.36	\$596.13	\$242.51
12/31/95	06/24/96	\$446.36	\$555.71	\$233.55
03/31/96	06/24/96	\$446.36	\$476.55	\$212.26

4. From 1989 to 1996, the IRS also made assessments against R & E for unpaid federal unemployment taxes. These assessments plus statutory additions are summarized as follows:

Tax Period	Date of Assessment	Amount of Assessment	Unpaid Balance	Statutory Additions
1989	07/15/96	\$112.00	\$270.37	\$66.81
1991	06/26/92	\$112.00	\$25.57	\$18.25
1992	07/08/96	\$112.00	\$204.74	\$55.49
1993	07/15/96	\$868.00	\$1,414.74	\$404.18
1994	07/15/96	\$868.00	\$1,289.99	\$457.81
1995	07/15/96	\$434.00	\$545.15	\$219.33

The parties agree that the assessments for the 1993, 1994, and 1995 tax periods may be reduced if 940 recertifications are issued by BETO.

5. The IRS issued a notice and a demand for payment to R & E on or about the dates of the assessments.

6. Despite notice and demand for payment, liabilities for federal taxes listed in

paragraphs three and four remain unpaid.

7. The Department of Labor and Industry, Bureau of Employer Tax Operations is a state taxing entity that collects state taxes.

8. R & E registered with BETO as an employer offering covered employment for wages subject to state unemployment compensation (“UC”) taxes.

9. R & E self-reported and self-assessed UC taxes to BETO. Some of these taxes remain due and unpaid.

10. On October 12, 1984, BETO filed a lien against R & E on behalf of the Pennsylvania Unemployment Compensation Fund (“Pa. UC Fund”) in the amount of \$335.95 in the Prothonotary’s Office of Philadelphia County at Docket Number 2288 October Term, 1984, which lien was timely revived September 28, 1992. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$34.30.

11. On November 23, 1990, BETO filed a lien against R & E on behalf of the Pa. UC Fund in the amount of \$1,240.07 in the Prothonotary’s Office of Philadelphia County at Docket Number 3782 November Term, 1990, which lien was timely revived September 21, 1995. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$41.00.

12. On November 9, 1992, BETO filed a lien against R & E on behalf of the Pa. U.C. Fund in the amount of \$695.48 in the Prothonotary’s Office of Philadelphia County at Docket Number 1001 November Term, 1992, which lien was timely revived September 19, 1997. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$41.00.

13. On March 4, 1996, BETO filed a lien against R & E on behalf of the Pa. U.C. Fund in the amount of \$742.47 in the Prothonotary’s Office of Philadelphia County at Docket

Number 297 March Term, 1996. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$903.26.

14. On April 18, 1996, the IRS filed a notice of federal tax lien against R & E in the amount of \$6497.58 in the Prothonotary's Office for Philadelphia County, docketed to 020281, for amounts assessed in 1991 and 1992. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$9,536.45.

15. On April 21, 1997, the IRS filed a notice of federal tax lien against R & E in the amount of \$31,312.27 in the Prothonotary's Office for Philadelphia County, docketed to 020134, for amounts assessed in 1996. This lien remains unsatisfied as of record. The amount due as of January 1, 1999, is \$25,534.15.

16. On April 21, 1997, the IRS filed a notice of federal tax lien against R & E in the amount of \$5,972.63 in the Prothonotary's Office of Philadelphia County, docketed to 020135, for amounts assessed in 1996. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$8,104.83, but which amount may be reduced if 940 recertifications are issued by BETO.

17. On April 29, 1997, BETO filed a lien against R & E on behalf of the Pa. UC Fund in the amount of \$776.58 in the Prothonotary's Office of Philadelphia County at Docket Number 3098 April Term, 1997. This lien remains unsatisfied of record. The amount due as of January 1, 1999, is \$921.62.

18. On July 31, 1998, the IRS filed a notice of federal tax lien against R & E in the amount of \$5,160.89 in the Prothonotary's Office for Philadelphia County, docketed to 020191, for amounts assessed in 1989. This lien remains unsatisfied of record. The amount due as of

January 1, 1999, is \$9,000.85.

19. At the time of oral argument, liquor license # R6957 had expired, but it was recoverable upon approval of a completed renewal application and payment of the PLCB's renewal fees.

20. In order to expedite the litigation, the IRS and BETO agreed that license # R6957 would be renewed and sold upon renewal.² The IRS completed a renewal application and agreed to pay the renewal fees. See Pl.'s Mot. for Approval of the Consent Order Allowing the Sale of Liquor License ("Mot. for Consent Order"), Att. A.

21. Liquor license # R6957 was sold on May 11, 1999, for \$6,100.

22. BETO issues a tax clearance certificate for each transaction initiated by a liquor licensee, and that clearance certificate is limited to that particular transaction.

23. If the liquor licensee does not have a tax clearance certificate upon application for renewal or transfer, a letter is issued by the PLCB to the licensee to contact the appropriate state taxing authority.

24. The PLCB does not take further action until the tax clearance certificate is issued.

II. CONCLUSIONS OF LAW

A. Jurisdiction

1. This is a foreclosure action by the United States pursuant to 28 U.S.C. §§ 1340,

² Pursuant to a consent agreement, approved by the court on November 16, 1998, the United States sold the liquor license and deposited the proceeds with the Clerk of Courts. In the consent agreement, the parties stipulated that the sale of the license would not affect the parties' claims or defenses and that the parties would maintain the same priority to the proceeds that they had to the underlying liquor license. See Mot. for Consent Order, Att. A.

1345, and 26 U.S.C. §§ 7402, 7403.

2. The Tax Injunction Act (“TIA”), 28 U.S.C. § 1341, provides that “[t]he district courts shall not enjoin, suspend or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.”

3. Based on the plain language of § 1341, the Act is inapplicable to this case. Plaintiff is not seeking to “enjoin, suspend or restrain” Pennsylvania’s tax assessment and collection activities. The United States brought its complaint pursuant to federal law in an effort to foreclose on its federal tax liens against R & E’s liquor license. Plaintiff joined the Commonwealth as a defendant because it also had a potential interest in the property. Plaintiff, through this action, is not trying to deprive defendant of any interest it may have in the property by means of an injunction or declaratory judgment. The foreclosure action simply establishes the priority of both parties’ interests relative to each other. Consequently, this action does not fall within the ambit of the TIA.

4. Additionally, § 1341 does not affect the court’s ability to assert jurisdiction when the United States or one of its instrumentalities has initiated the action to “protect [itself] from ‘unconstitutional state exactions.’” Department of Employment v. United States, 385 U.S. 355, 358 (1966); accord, Simon v. Cebrick, 53 F.3d 17 (3d Cir. 1995) (holding jurisdiction proper where instrumentality of the United States “sought the protection afforded by a federal statute to prevent its assets from being foreclosed without its consent”); In re Levy v. United States, 574 F.2d 128 (2d Cir. 1978) (finding that § 1341 did not prevent jurisdiction where United States sought to prevent unconstitutional taking of its property in form of state taxes on veteran’s estate that escheated to federal government).

5. The United States believes that, pursuant to federal law, its interest in the proceeds from the sale of the liquor license is superior to all but one lien held by the Commonwealth and, therefore, it is entitled to the lion's share of the \$6001.00. The United States has brought suit to protect this interest in the property. Consequently, § 1341 does not preclude the court from hearing this case and jurisdiction is proper.

B. Rules of Attachment and Perfection

6. The IRS has liens that arose automatically when the taxes were assessed on all of R & E's property including the liquor license. See 26 U.S.C. § § 6321, 6322 (West 1989); Monica Fuel, Inc. v. Internal Revenue Serv., 56 F.3d 508, 511 (3d Cir. 1995).

7. BETO's liens attached on the date they were filed in the office of the Prothonotary. See 43 Pa. Cons. Stat. Ann. § 788.1 (a) (West 1991).³

8. Federal law determines the relative priority of federal tax liens and any competing liens on the property. See Aquilino v. United States, 363 U.S. 509, 513-14 (1960); United States v. Oswald & Hess Co., 345 F.2d 886, 887 (3d Cir. 1965) ("federal law is determinative where the question involved is the priority to be accorded to a lien of the federal government whatever its source"). As a general matter, priority is established according to the principle that "the first in time is the first in right." United States v. City of New Britain, 347 U.S. 81, 85 (1954)

9. As against most liens (except those enumerated in 26 U.S.C. § 6323 (a)) federal

³ Section 788.1 provides that
"All contributions and the interest and penalties thereon due and payable by an employer under the provisions of this act shall be a lien upon the franchises and property, both real and personal, . . . of the employer liable therefor and shall attach thereto from the date a lien of such contributions, interest and penalties is entered of record in the manner hereinafter provided."
43 Pa. Cons. Stat. Ann. § 788.1(a) (West 1991)

tax liens are perfected and can be first in time from the day of assessment. See 21 West Lancaster Corp. v. Main Line Restaurant, Inc., 790 F.2d 354, 356 (3d Cir. 1986) (stating that “lien arising under § 6321 is afforded priority over all other unperfected liens or claims asserted against the taxpayer’s property” except those set forth in § 6323(a)); Terwilliger’s Catering Plus, Inc. v. Internal Revenue Serv., 911 F.2d 1168, 1175 (6th Cir. 1990) (declaring “federal tax lien need not be filed to gain priority over other interests; it is perfected at the time the lien is assessed”).

10. Under § 6323, federal tax liens cannot have priority over a “security interest, mechanic’s lienor, or judgment lien creditor until notice thereof . . . has been filed” in accordance with state law. 26 U.S.C. § 6323 (a), (f) (Supp. 1999). Thus, as against these three types of liens, a federal tax lien becomes perfected and can be first in time only when notice of the lien has been properly filed. See In re Fisher v. Bentz, 7 B.R. 490, 494 (W.D. Pa. 1980) (stating that federal tax lien is perfected against “bankruptcy trustee and other judgment lien creditors upon the filing of the Notice of Federal Tax Lien”).

11. For any state law liens to have priority over a federal tax lien, the state lien must be “perfected in the sense that there is nothing more to be done to have a choate lien” prior to the assessment or filing of the federal tax lien (whichever is required). Monica Fuel, Inc. v. Internal Revenue Serv., 56 F.3d 508, 511 (3d Cir. 1995) (quoting United States v. Vermont, 377 U.S. 351, 355 (1964)); accord, United States v. McDermott, 507 U.S. 447, 449-50 (1993) .

12. A lien is choate and perfected when “the identity of the lienor, the property subject to the lien, and the amount of the lien are established.” McDermott, 507 U.S. at 449 (quoting City of New Britain, 347 U.S. at 84). To meet the last requirement of choateness, “the lienor must either have obtained judgment on the lien or it must be enforceable against the

property by summary proceeding.” Oswald & Hess Co., 345 F.2d at 888.

13. UC tax liens filed in accordance with 43 Pa. Cons. Stat. Ann. section 788.1, “attach and [became] choate at the time of their recording in prothonotaries’ offices.” Almi, Inc. v. Dick Corp., 375 A.2d 1343 (Pa. Commw. Ct. 1977); accord, Mozingo v. Pennsylvania Dept. of Labor and Indus., 234 B.R. 867 (E.D. Pa. 1999) (stating that valid statutory lien under § 788.1 “became choate at the time of its recording”).

C. BETO as Judgment Lien Creditor

14. The Federal Tax Regulations on Procedure and Administration contain the following definition of judgment lien creditor:

The term ‘judgment lien creditor’ means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. . . . The term ‘judgment’ does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

26 C.F.R. § 301.6323(h)-1(g).

15. The term “judgment creditor,” now “judgment lien creditor,” is used in its “conventional sense of a judgment of a court of record” according to the Supreme Court.⁴ United States v. Gilbert Assoc., Inc., 345 U.S. 361, 364 (1953). The mere assessment of taxes does not qualify a state or local taxing authority as a judgment creditor. See id. (holding that assessment of taxes did not make town judgment creditor).

16. The term “judgment creditor” generally refers to “[a] person in whose favor a

⁴ The subsequent revision to § 6323, which inserted the term lien “did not alter the definition courts had traditionally given to ‘judgment creditor.’” Air Power, Inc. v. United States, 741 F.2d 53, 56 n.3 (4th Cir. 1984). Thus, to be a judgment lien creditor, one still needs a judgment from a court of record.

money judgment has been entered by a court of law and who has not yet been paid. One who has obtained a judgment against his debtor under which he can enforce execution. . . .” Black’s Law Dictionary 844 (6th ed. 1990).

17. A judgment lien is the “right to subject property of judgment debtor to satisfaction of judgment. A charge on or attachment of property of one who owes a debt and is subject to a judgment thereon.” Id. at 845.

18. The crucial element for the creation of a judgment creditor or a judgment lien is receipt of a judgment, which is defined as “[t]he official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. The final decision of the court, resolving the dispute and determining the rights and obligations of the parties. . . .” Id. at 841-42.

19. No court of record has issued a decision regarding BETO’s tax liens against R & E’s liquor license.

20. BETO filed its notice of liens with the Prothonotary’s Office of Philadelphia County pursuant to 43 Pa. Cons. Stat. Ann. § 788.1.⁵ Filing a notice of a lien pursuant to section

⁵ Section 788.1 states in relevant part:
(b) The department may at any time transmit to the prothonotaries of the respective counties of the commonwealth, to be by them entered of record and indexed as judgments are now indexed, certified copies of all liens imposed hereunder, upon which record it shall be lawful for writs of execution to be directly issued without the issuance and prosecution to judgment of writs of scire facias: Provided, That not less than ten (10) days before issuance of any execution on the lien, notice of the filing and the effect of the lien shall be sent by registered or certified mail to the employer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens the payment of the costs incident thereto. . . .

43 Pa. Cons. Stat. Ann. § 788.1 (b) (West 1991).

788.1, involves no “judicial intervention” and “[t]he fact that the legislation stated that the paper should be filed in the office of the Prothonotary does not make it a ‘judgment,’ even though the Prothonotary also is the repository for judicial records.” In re Braxton v. Bureau of Unemployment Compensation Benefits & Allowances, 224 B.R. 564, 569 (W.D. Pa. 1998) (holding that state tax lien was not judicial lien arising from judgment such that it could be avoided in bankruptcy by Chapter 13 debtor); accord, Almi, Inc., 375 A.2d at 1351-53 (determining priority between federal tax liens and state tax liens based on date federal tax liens were assessed -- “a Commonwealth lien entered prior to the date of assessment of a United States tax lien is first in time and first in right”).

21. Based on the plain language of the regulations, the common definitions of the terms comprising “judgment lien creditor,” and the foregoing cases, I conclude that BETO does not qualify as a judgment lien creditor.

22. As BETO is not a judgment lien creditor, the federal tax liens have priority over all of BETO’s liens perfected after the IRS assessments.

D. BETO’s Interest Pursuant to 47 Pa. Cons. Stat. Ann. § 4-477

23. The Pennsylvania Liquor Code provides that a liquor license “shall constitute a privilege between the board and the licensee. As between the licensee and third parties, the license shall constitute property.” 47 Pa. Cons. Stat. Ann. § 4-468 (d) (West 1997).

24. As defendant, a taxing entity, already has filed liens against the liquor license pursuant to section 788.1 and such liens can only attach to “the franchises and property, both real and personal, . . . of the employer,” BETO must be a “third party” under section 4-468. See In re Pompeo v. Pennsylvania Dept. of Revenue, 195 B.R. 43, 47 n.5 (W.D. Pa. 1996) (en banc)

(determining that “taxing authorities are not the Liquor Control Board but rather third parties” and proceeds from sale of license constitutes property as between taxing authority and licensee). The United States is clearly not the Board and therefore, as between R & E and the United States, the license and its proceeds are also property. See also 21 West Lancaster Corp., 790 F.2d at 358 (holding that regardless of state’s characterization of liquor license, for purposes of federal law, it is property subject to federal tax lien).

25. The Liquor Code also establishes that PLCB “shall not approve any application for the grant, renewal or transfer of any [liquor license] where the applicant has failed to . . . (3) pay any State taxes not subject to a timely administrative or judicial appeal or subject to a duly authorized deferred payment plan.” 47 Pa. Cons. Stat. Ann. § 4-477 (d)(3) (West 1997).

26. The purpose of section 4-477 (d)(3), as declared by the Office of the Attorney General in a previous bankruptcy case involving the same statutory provision, was “to collect taxes” with the method being “to give the State a superior right over other creditors.” In re Pompeo, 195 B.R. at 53-54 (quoting statements regarding the history of section 4-477 made during hearing before en banc panel of bankruptcy court in Western District of Pennsylvania) .

27. If section 4-477 (d)(3) grants to BETO some reserved interest in the liquor license having superpriority over all other creditors’ interests regardless of time of perfection, the statute conflicts with the priority scheme set forth in 26 U.S.C. § 6323. Cf. In re Pompeo, 195 B.R. at 52 (finding that 4-477 (d) (3) conflicts with priority and distribution provisions of federal bankruptcy law); In re Kick-Off, Inc., 82 B.R. 648, 650 (D. Mass. 1987) (holding that similar provision in Massachusetts liquor licensing statute conflicted with priority provisions of federal bankruptcy law).

28. To the extent that section 4-477 (d)(3) conflicts with the Internal Revenue Code, it is preempted by federal law pursuant to Article VI, Clause 2, of the United States Constitution (the Supremacy Clause).⁶

29. If section 4-477 (d)(3) creates some other lien interest or lien-like interest on behalf of BETO in the proceeds of the license, any such lien would necessarily be subject to the federal choateness requirements and priority provisions discussed previously. See In re Terwilliger's Catering Plus, Inc. v. United States, 911 F.2d 1168 (6th Cir. 1990) (finding that lien created by Ohio liquor code was not choate at time federal assessments made); United States v. Comptroller of the Treasury of Maryland, No. MJG-96-3045, 1997 WL 669957, *1 (D. Md. Aug. 12, 1997) (same).

30. Section 4-477 (d)(3), however, does not mention the word "lien" anywhere in the text. See In re Pompeo, 195 B.R. at 52 (stating that absence of reference to lien is significant because when Commonwealth "has wished to create a lien, [it] has been clear in doing so"). Moreover, 4-477 (d)(3) does not give the state the right to sell the license and apply the proceeds to the tax debt -- to do this, the state must actually file a lien. See 47 Pa. Cons. Stat. Ann. § 4-477 (d)(3); In re Pompeo, 195 B.R. at 52-53 (quoting discussion between court and Commonwealth). Therefore, I conclude that this provision does not create a lien interest on behalf of BETO in the liquor license.

⁶ Article VI, clause 2, of the United States Constitution provides:
This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

E. Conclusion

31. Defendant filed its first lien in the Prothonotary's office in 1984 for \$335.95, \$34.30 of which remains unpaid as of January 1, 1999. This lien was perfected before the IRS effected any federal tax assessments.

32. Prior to any further liens being recorded by BETO, the IRS made three tax assessments in 1989 which, as of January 1, 1999, have unpaid balances and statutory additions totaling \$9,000.85. See Findings of Fact, ¶¶ 3, 10-11 supra (detailing unpaid balances and statutory additions on IRS assessments including those made in 1989 prior to BETO's second lien filed on Nov. 23, 1990).

33. Based on the premise that the first in time is the first in right, I conclude that the Commonwealth is entitled to \$34.30 of the proceeds from the sale of the liquor license # R6957 and that the United States is entitled to the remaining \$6,065.70.

34. As only \$6,100.00 in proceeds exist, and the 1984 state lien and first three IRS assessments will deplete this entire amount, any further evaluation of the priorities of the various liens is unnecessary.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-1068
R&E CORPORATION and	:	
COMMONWEALTH OF PENNSYLVANIA	:	

ORDER

AND NOW, this day of August 1999, upon consideration of the pleadings and oral arguments in this case, IT IS HEREBY ORDERED that the United States has valid and subsisting federal tax liens which attach to the proceeds of the sale of liquor license # R6957 and on the basis of which the United States has foreclosed on the proceeds of the sale of said liquor license. IT IS FURTHER ORDERED that the proceeds of the liquor license in the amount of \$6,100.00 held by the Clerk of Courts shall be distributed in the following order of priority:

1. To satisfy the balance of the lien against all property and rights to property of R & E Corporation filed on October 12, 1984 by the Commonwealth of Pennsylvania's Department of Labor and Industry. The unpaid balance of this lien as of January 1, 1999, was \$34.30.
2. To satisfy the liens of the Internal Revenue Service that arose as a result of assessments made against R & E Corporation through September 18, 1989. The unpaid balance of these liens as of January 1, 1999, was \$9,000.85.

William H. Yohn, Jr., J.