

**Bankrupt—Claims—Industrial Accident Board—Liens—
Taxes—Trustees—Workmen's Compensation.**

An assessment levied in accordance with the provisions of Section 40 (e) of the Workmen's Compensation Act is not entitled to be prorated with the claims of the federal, state, and county governments for taxes.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

You have submitted to this office the claim of the Industrial Accident Board filed in the case of Charles F. Clarke & Co., bankrupts.

From your statement it appears that there is in the hands of the referee, belonging to the estate of the bankrupts, the sum of \$3,000 and that claims of the U. S. Government, the State of Montana, and the County of Cascade for taxes are in excess of this amount.

The question is whether the claim of \$30.54, which is an assessment levied in accordance with the provisions of Section 40 (e) of the Workmen's Compensation Act, is entitled to be pro rated with claims of federal, state and county governments for taxes.

In the case of *In re Farrell*, 211 Fed. 212, the Industrial Insurance Department of the State of Washington had filed with the referee in bankruptcy a claim representing assessments made by the Industrial Insurance Department against the bankrupts based upon their pay roll of workmen in extra hazardous employment and the state claimed priority of payment under Section 64a of the Bankruptcy Act. This claim was resisted for the reason that it did not constitute a claim having a priority within the meaning of the bankruptcy statute.

Section 64a of the Bankruptcy Act provides:

"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 of dividends to creditors."

The Court, after quoting the foregoing section, said:

"It is manifest from a reading of Section 64 of the Bankruptcy Act which was passed prior to the passage of the Industrial Insurance Act of Washington, that Congress intended to include within said section only such taxes as were required to be paid into a common fund for the support of the government, national, state, or municipal, and such a fund which would relieve the general taxpayer from a payment of an unfair proportion of the expenses in the operation of the government, or a tax which would be by operation of law a lien upon property of the bankrupt estate.

"New Jersey v. Anderson, 203 U. S. 483, 27 Sup. Ct. 137, 51 L. Ed. 284, is cited by claimant in support of its contention. This was a tax levied upon the capital stock of a corporation organized in New Jersey, and which was doing business in Illinois. The Supreme Court in that decision said:

"'Generally speaking, a tax is a pecuniary burden laid upon an individual or property for the purpose of supporting the government. We think this exaction is of that character. It is required to be paid by the corporation after organization in invitum.'

"The general assessment provisions of the Industrial Insurance Act does not assess a tax which is paid into a fund for the support of the government, but creates an 'accident fund' for a special purpose, and that purpose is to relieve employers engaged in extra hazardous work from liability for negligence in the operation of their plants whereby injuries result to workmen, and to compensate such injured workmen." Section 2928, Revised Codes of 1921, provides as follows:

"In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this Act, every liability which may be due under this Act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this Act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be pro rated with other lienable claims, and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors."

It seems that the Washington Compensation Act contains no such provision, but contains a provision that, in case of default of the employer in any payment to the accident fund, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. The Court in this case held that the claim was not a tax, and therefore was not entitled to a preference under the provisions of Section 64a.

However, the Washington law does not make the assessment a lien upon any property as does our statute.

It is my opinion that the claim in question would not be entitled to be pro rated with the claims of the federal, state and county governments for taxes.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.