

U.S. Supreme Court Rejects Operating Subsidiaries' Presumptive Right to Tax Refunds in Bankruptcy

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The U.S. Supreme Court issued a decision on February 25 that reduces certainty as to which member of a consolidated tax group is entitled to a federal tax refund. In *Rodriguez v. FDIC*, the Court ruled unanimously that the issue is a question of corporate property rights governed exclusively by state law. It rejected a line of lower court decisions applying a federal common law presumption in favor of the subsidiary corporation whose operations generated the right to the tax refund. State law rules of contractual interpretation, as well as state law equitable principles, such as the doctrine of unjust enrichment, will now control this question. Since most state laws will respect explicit and clear contractual language, the key bottom line takeaway from the case is that corporate groups should confirm that the tax allocation agreement provisions governing allocations of tax refunds between the parent and any subsidiaries are clear and explicit. Bank holding companies should confirm that they have complied with 2014 regulatory guidance which requires specific contractual language making clear the bank's entitlement to tax refunds.

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