



1 Jr. a.k.a. William Kivett and Karen L. Kivett for federal individual income tax  
2 liabilities (Form 1040), described in paragraphs 3, 6-7, 9 of the Motion (also  
3 described in paragraphs 9-11 and 16-18 of the United States' Answer and Claim  
4 filed at ECF No. 5), have priority over the surplus funds (i.e., interpleader fund).  
5 The United States' priority precludes MTC from recovering the fees and costs  
6 totaling \$1,138.72 that are attributable to the interpleader action alleged in  
7 paragraph 4 of the Notice of Deposit of Surplus Funds From Trustee's Sale  
8 Pursuant to RCW § 61.24.080 (ECF Nos. 1-2, 6-1 at 2-19), that were not deposited  
9 into the registry of the Superior Court of the State of Washington in and for  
10 Yakima County, because the award of fees and costs to the Trustee from an  
11 interpleader fund would deplete the fund prior to total satisfaction of the tax lien.  
12 *See Abex Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516-517 (9th Cir. 1984);  
13 *Bank of Am. Nat. Tr. & Sav. Ass'n v. Mamakos*, 509 F.2d 1217, 1219 (9th Cir.  
14 1975).

15 3. The United States is entitled to the full amount of the surplus funds in  
16 the amount of \$30,554.47, of which \$29,415.75 was deposited into the registry of  
17 the Superior Court for the State of Washington in and for Yakima County and  
18 \$1,138.72 was not deposited into the registry.

19 4. The United States and MTC shall bear their own respective costs and  
20 attorney's fees.

1           5.     The Clerk of the Court for the Superior Court for the State of  
2 Washington in and for Yakima County, is hereby authorized and directed to draw a  
3 check on the funds previously deposited in the registry of the court (under Cause  
4 No. 17-2-02930-39) in the principal amount \$29,415.75, payable to the  
5 “Department of Justice” and mail or deliver the check to the following address:

6           Tax FLU, Office of Review  
7           U.S. Dept. of Justice Tax Division  
8           P.O. Box 310  
            Ben Franklin Station  
            Washington, D.C. 20044-0310

9 The check shall bear a notation for CMN 2017102200.

10          6.     MTC is hereby authorized and directed to draw a cashier’s check on  
11 the surplus funds that were not deposited into the court’s registry in the amount of  
12 \$1,138.72, payable to “Department of Justice” and mail or deliver the check to the  
13 following address:

14          Tax FLU, Office of Review  
15          U.S. Dept. of Justice Tax Division  
16          P.O. Box 310  
            Ben Franklin Station  
            Washington, D.C. 20044-0310

17 The check shall bear a notation for CMN 2017102200.

18          7.     This order resolves all claims in this case.

19          8.     This Court maintains jurisdiction to effectuate this resolution.

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1           9. This case is otherwise dismissed with prejudice.

2           The District Court Executive is directed to enter this order, and judgment  
3 accordingly, provide copies to the parties, and certified copies to the Clerk of Court  
4 for the Superior Court for the State of Washington in and for Yakima County, and  
5 then **close** the file.

6           **IT IS SO ORDERED.**

7           DATED December 14, 2017.



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*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge