Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

United States v. Miller: Supreme Court Limits Bankruptcy Trustees' Power to Void Tax Payments

April 9, 2025

On March 26, 2025, the Supreme Court in *United States v. Miller* limited a bankruptcy trustee's ability to void—or recover—a tax payment to the Internal Revenue Service (IRS) made by the debtor prior to the bankruptcy if the trustee is using state law to attempt to avoid the transfer. The case examined the interaction between two sections of the Bankruptcy Code. First, § 544(b) allows a bankruptcy trustee to recover payment that the debtor made before bankruptcy if such payment "is voidable under applicable law," including state law. Second, § 106(a)(1) waives the federal government's sovereign immunity for particular sections of the Bankruptcy Code, including § 544. In *Miller*, the Court considered the extent of the waiver of sovereign immunity: particularly, does § 106(a)(1) waive sovereign immunity for state-law causes of action that might underlie the § 544(b) avoidance action or only the avoidance action itself? In a controlling opinion authored by Justice Jackson, the Court answered the latter, effectively preserving sovereign immunity for underlying state law causes of action.

This Legal Sidebar examines the Bankruptcy Code sections at issue in *Miller*, presents the facts of the case, discusses the controlling and dissenting opinions, and presents considerations for Congress.

Sections 106 and 544 of the Bankruptcy Code

Under various sections in the Bankruptcy Code, bankruptcy trustees have the power to void, or undo, certain transfers of assets made by a debtor. This power serves to help the trustee maximize the value of the bankruptcy estate and prevents preferential treatment of certain creditors outside the bankruptcy process.

Section 544 of the Bankruptcy Code—sometimes called the "Strong-Arm" powers—gives the bankruptcy trustee similar avoidance powers as a hypothetical creditor or bona fide purchaser. As relevant in *Miller*, § 544(b) allows a trustee to "avoid any transfer of an interest of the debtor . . . that is voidable under applicable law by a creditor holding an unsecured claim." "Applicable law" includes state statutes such as state "fraudulent transfer" laws, which generally "aim to prevent debtors from hiding or shielding their assets from creditors." Some fraudulent transfer laws permit creditors to void "constructive" fraudulent transfers where an insolvent debtor transfers assets for less than their value. To invoke § 544(b), though, the trustee must identify an actual creditor who could have voided the transfer under the applicable law. This "actual-creditor" requirement limits the trustee's § 544(b) avoidance powers so that the trustee has no greater rights than an actual creditor would have on its own. The actual-creditor requirement for § 544(b) contrasts with the trustee's other avoidance powers under § 544, such as the power to avoid transfers of certain liens, which apply "whether or not such a creditor exists." For those other avoidance powers—in § 544(a)—the trustee can avoid the transfer "without identifying an actual creditor capable of invalidating those transfers under state law."

Section 106(a)(1) waives the federal government's sovereign immunity for particular sections of the Bankruptcy Code, including § 544 avoidance actions, allowing courts to hear claims against the government on those actions. At the same time, § 106(a)(5) expressly provides that "[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing" under other law.

Factual and Procedural Background

The business at issue in *Miller*—Utah-based company All Resort Group—struggled financially and fell into insolvency in 2013. As the company struggled, two of its shareholders misappropriated company funds for their own personal use. In 2014, they transferred roughly $145,000 in company funds to the IRS to satisfy their personal tax liabilities, while the company received nothing in return. The company filed for bankruptcy three years later.

The appointed trustee of the bankruptcy estate then invoked Utah's fraudulent-transfer statute as "applicable law" to avoid the 2014 tax payment under § 544(b).[1] The bankruptcy court allowed the avoidance, construing § 106(a)(1) as waiving sovereign immunity not just for the § 544(b) avoidance claim but also the fraudulent-transfer action under Utah law. Both the district court and U.S. Court of Appeals for the Tenth Circuit affirmed the Bankruptcy Court's decision. The Tenth Circuit's decision pointed out a circuit split regarding whether § 106(a)(1) abrogates sovereign immunity when state law supplies "applicable law" for a trustee's avoidance action under § 544(b).

The Court's Opinion

Justice Jackson's controlling opinion, joined by seven other justices, held that § 106(a)(1) does not waive the federal government's sovereign immunity as to applicable state law under which the trustee's avoidance action under § 544(b) is based. As a result, the trustee could not void the shareholders' transfers to the IRS.

Justice Jackson reasoned that no actual creditor could have recovered from the IRS because the government's sovereign immunity would protect it from suit under Utah's fraudulent transfer law. Justice Jackson further added that a contrary decision would create a substantive right—to void the IRS

[1] As the controlling opinion notes, in addition to incorporating state fraudulent transfer laws via § 544(b), "the Bankruptcy Code contains its own fraudulent transfer provision in § 548. Although that provision resembles most States' fraudulent-transfer laws, its statute of limitations is only two years," while state statutes of limitations may be longer. For that reason, as was the case in *Miller*, where the bankruptcy was filed three years after the fraudulent transfer to the IRS, a trustee would have to rely on state law via § 544(b) to avoid a fraudulent transfer that occurred more than two years before the bankruptcy petition was filed. Section 106(a)(1) also waives sovereign immunity for § 548. Although not at issue in *Miller*, a bankruptcy trustee could avoid a payment to the IRS under § 548 within the two-year statute of limitations without raising the question of whether the waiver of sovereign immunity applies to state law. Thus, *Miller*'s holding is practically relevant in relatively narrow circumstances where state fraudulent transfer laws allow claims that cannot be brought under the federal provision, for example, because of a longer statute of limitations.

payments—that does not exist outside of bankruptcy, contravening § 106(a)(5). In support of her conclusion, Justice Jackson cited precedents that narrowly construed waivers of sovereign immunity, as well as legislative history of § 106 expressing a policy of achieving "symmetry between bankruptcy and non-bankruptcy proceedings."

Justice Jackson also responded to arguments that such a narrow reading of § 106(a)(1) renders the waiver of sovereign immunity for § 544 useless because no trustee could ever win against the government. Justice Jackson explained that the waiver is still relevant for narrow circumstances.

Justice Gorsuch's Dissent

In a short dissenting opinion, Justice Gorsuch stated his opposite position that the shareholders' transfers to the IRS should be "voidable under applicable law." In Justice Gorsuch's view, the inquiry should be limited to the underlying "applicable law"—that is, Utah's fraudulent-transfer statute. In other words, the transfers should be voidable "even though the trustee must sue the United States to void the relevant transfers," and the question of sovereign immunity should be a separate inquiry. According to Justice Gorsuch, § 106(a)(1) should be interpreted to "bar[] the government from raising a sovereign-immunity defense in the trustee's action" in a bankruptcy proceeding.

Considerations for Congress

Justice Jackson's controlling opinion focused on deducing Congress's intent in enacting both the waiver of sovereign immunity in § 106(a)(1) and the avoidance authority under § 544(b). Regarding the avoidance authority, the opinion identified that the difference in statutory language between § 544(a) and § 544(b) "reflects a deliberate congressional choice to tie the trustee's rights under subsection (b) to the rights of an actual creditor under 'applicable law.'" Based on this construction, the Court "doubt[ed] that Congress meant to supplant that choice when it opted to include § 544 on the lengthy list of provisions it inserted into § 106(a)" to waive the federal government's sovereign immunity. In other words, the Court found that it was Congress's intent to impose an actual-creditor requirement on § 544(b) avoidances. Further, according to the Court, the waiver in § 106(a)(1) should be read to advance Congress's intent to preserve "symmetry" between bankruptcy and non-bankruptcy proceedings. Congress could consider amending § 106 or § 544 to the extent that the Court's holding conflicts with current congressional intent.

Miller also creates a situation where identical transfers to the government could be voidable under the federal fraudulent transfer provision in § 548 but not under § 544(b) because, for example, a transfer occurs outside the two-year federal statute of limitations. Consistent with its policy determinations, Congress could consider amending § 548 to align more with state fraudulent transfer laws—for example, by extending the federal statute of limitations—to reduce disparities in outcome from relying on state law versus the federal provision.

Author Information

Justin C. Chung
Legislative Attorney

Disclaimer