

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(9)I  
Income Tax  
October 19, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1100726B

On July 26, 2010 a Petition for Advisory Opinion was received from [REDACTED] (hereinafter "Petitioner") [REDACTED]. The petition asks whether the filing of a joint New York State income tax return by Petitioner and her husband will subject Petitioner's separate assets to the liens of warrants filed and docketed against her husband prior to their marriage.

We conclude that the filing of a joint income tax return by Petitioner and her husband will not subject Petitioner's separate assets to the liens of the unpaid warrants against her husband or make Petitioner liable for payment of her husband's tax debts. However, if a joint income tax return is filed showing that a tax refund is due, the Department has the right to offset the entire refund, including Petitioner's portion thereof if any, against her husband's tax debts unless Petitioner acts to protect her portion as discussed below.

**Facts**

Petitioner was recently married to [REDACTED]. Petitioner has no tax debts to the Department. However, her husband has three unpaid New York State tax warrants, each of which was filed and docketed against him prior to their marriage. The Department's records show that all required filings were made with regard to each of the three warrants filed and docketed against [REDACTED]. Each of the warrants is still enforceable. Her husband's total indebtedness pursuant to the warrants is approximately \$4.6 million dollars.

**Analysis**

When a tax warrant is docketed and filed in the appropriate county clerk's office, the Department is deemed to have obtained a judgment against the taxpayer for the tax or other amounts (e.g., Tax Law §§ 692(e) and 1141(b)). The docketing and filing of the warrant in the appropriate county clerk's office and the New York State Department of State creates a lien in the amount of the warrant against the taxpayer's title to and interest in real, personal and other property (*see*, Tax Law §§ 6, 692(c), 692(d), 692(g) and 1141(b)). Upon completion of docketing and filing the Department may commence action to collect upon the warrant (*see*, Tax Law §§ 692(f), 692(g), 692(h), 1141(a) and 1141(b)). The Department's records show that all required filings were made with regard to each of the three (3) warrants filed and docketed against [REDACTED].

When collecting warrants, the Department uses the collection devices set forth in Article 52 of the New York Civil Practice Law and Rules (CPLR), which is entitled Enforcement of Money Judgments. Because a warrant is deemed to be a judgment, it is enforceable against personal property for 20 years from the date of its docketing and filing in the appropriate county clerk's office and the New York State Department of State (CPLR § 211(b), Tax Law § 6). Its period of enforceability against personal property will be extended upon the happening of certain events mentioned in CPLR § 211(b). A warrant is a lien against and is enforceable against real property for at least 10 years from docketing (*see*, Tax Law §§ 174-a(1), 174-a(2) and CPLR § 5203(a)). The lien and enforceability of a warrant against real property

can be extended under certain circumstances pursuant to CPLR § 5203(b). CPLR § 5014 may be used by a judgment creditor to obtain similar but expanded relief with regard to real property.

Filing a joint return makes both spouses jointly and severally liable for taxes due in the taxable year, as well as penalty and interest. (*see*, Tax Law § 651(b)(2)). However, our research does not reveal any statute or court decision supporting the proposition that the filing of a joint income tax return would subject one spouse's separate assets to the liens of warrants against the other spouse or to payment of the other spouse's tax debts, when the warrants were filed and docketed against the other spouse before their marriage. Accordingly, the filing of a joint income tax return by Petitioner and her husband will not subject Petitioner's separate assets to the liens of the unpaid warrants against her husband or make Petitioner liable for payment of her husband's tax debts.

However, if Petitioner and her husband file a joint income tax return showing that a tax refund is due, then the Department has the right to offset the entire refund, including Petitioner's portion thereof, if any, against her husband's tax debt (*see*, Tax Law §§ 171(27th), 171-f and 651(b)(6)). To protect herself against that situation, Petitioner must seek relief from the Department (Tax Law § 651(b)(6)). This relief is known as nonobligated spouse relief. *See* the Department's Publication 89 dated July, 2009, Form IT-280 and accompanying instructions, and the Combined Instructions For Forms IT-150 and IT-201 which discuss the subject.

DATED: October 19, 2010

/S/  
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DANIEL SMIRLOCK  
Deputy Commissioner and Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.