New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

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July 30, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION   PETITION NO. Z910304C

On March 4, 1991 a Petition for Advisory Opinion was received from Marine Midland Bank, N.A., One Marine Midland Center, 27th Floor, Buffalo, New York 14203-2827.

The issue raised by Petitioner, Marine Midland Bank, N.A., is whether a bank must apply a New York State Tax Levy, which is against "Mr. X individually and as an officer of ABC, Inc." against:

    a) only an account in the name or Mr. X; or
    b) only an account in the name or ABC, Inc.; or
    c) both the accounts of Mr. X and ABC, Inc.

ABC, Inc. is a New York State corporation engaged in retail sales which require the collection of sales taxes. Mr. X is an officer of ABC, Inc. At some point, ABC, Inc. fails to pay the sales taxes which it owes. Because of the failure, the Commissioner of Taxation and Finance issues a tax warrant against "Mr. X individually and as an officer of ABC, Inc." Subsequently, the Commissioner issues a Tax Levy which names the Commissioner as judgment creditor and "Mr. X individually and as officer of ABC, Inc." The Tax Levy is served upon the bank.

At the time it receives the Tax Levy the bank holds two accounts. One account is in the name of Mr. X. The other account is in the name of ABC, Inc. Neither account, jointly or severally, holds a sufficient balance to pay the Tax Levy. In the alternative, both of the accounts each hold sufficient balances to pay the Tax Levy.

Sections 692(c), (d), (e) and (f) of the Tax Law provide that:

    (c) Issuance of warrant after notice and demand.--If any person liable under this article for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such person under subsection (b), the tax commission may within six years after the date of such assessment issue a warrant under its official seal directed to the sheriff of any county of the state, or to any officer or employee of the department of taxation

and finance, commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the tax commission and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. If the tax commission finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the tax commission and upon failure or refusal to pay such tax or other amount the tax commission may issue a warrant without regard to the ten-day period provided in this subsection.

(d) Copy of warrant to be filed and lien to be created.--Any sheriff or officer or employee who receives a warrant under subsection (c) shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state.

(e) Judgment.--When a warrant has been filed with the county clerk the tax commission shall, in the right of the people of the state of New York, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution.--The sheriff or officer or employee shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. An officer or employee of the department of taxation and finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

Other articles of Tax Law involving other taxes collected by the Department of Taxation and Finance contain similar collection procedures.

The Court of Appeals held in Reid v. Stegman, 99 NY 646 that where a corporation is authorized to be sued in its own name and a judgment is entered and docketed against named individuals as constituting the corporation, an execution against such persons individually is unauthorized and void.

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It therefore follows that in the reverse situation an execution docketed against the individual officers of a corporation may only be applied against the individual officers and not against the corporation.

Thus in the instant case a tax levy or warrant against "Mr. X individually and as an officer of ABC, Inc." is to be applied only against an account in the name of Mr. X and may not be applied against an account in the name of "ABC, Inc." even though the same bank may hold separate accounts for the individual and the corporation.

DATED: July 30, 1991   s/PAUL B. COBURN
                                             Deputy Director
                                             Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
      are limited to the facts set forth therein.