CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 235

October 27, 1959

WITHHOLD ORDERS: CODE OF CIVIL PROCEDURE SECTIONS DEALING WITH JOINT BANK ACCOUNTS NOT APPLICABLE TO WITHHOLD ORDERS

Syllabus:

The provisions of Sections 539(a) and 682(a) of the Code of Civil Procedure, referring to joint bank accounts, do not apply to withhold orders issued pursuant to Sections 18807 and 26132 of the Revenue and Taxation Code.

A is held to be liable as transferee of two wholly owned corporations which were dissolved with outstanding taxes due. Jeopardy assessments were set up against taxpayer and an order to withhold was issued against X bank. The bank returned our notice claiming that taxpayer only had a joint account with his wife and that his interest therein was indeterminable. The bank relied on Sections 539(a) and 682(a) of the Code of Civil Procedure to justify their refusal to honor our withhold order.

The Code of Civil Procedure (Section 539(a)) provides that a writ of attachment may not be issued against a joint bank account in the name of the defendant and some other person, unless the plaintiff furnishes a bond of double the amount of the claim to protect the other joint owner in the event of damage arising out of an erroneous attachment.

The Code of Civil Procedure (Section 682(a)) provides for a bond under the same factual circumstances where a judgment creditor is levying a writ of execution on a joint bank account. The section also requires the bank to give notice of the levy to the other joint owner before the funds may be turned over to the judgment creditor.

The withhold sections were designed to provide the State with a speedy remedy for the collection of delinquent taxes. The validity of the remedy is assured by reason of the fact that the taxpayer has the refund and appeal procedure at his disposal.

The Legislature was presumably aware of the unique nature of the withhold statutes, and intended that they be unrestricted in the collection of delinquent taxes. Since the restrictions in the Code of Civil Procedure were not expressly made applicable to the withhold sections, they do not apply.

WITHDRAWN