

1986

A JUDGMENT FOR STATE RETAIL SALES TAX AS AUTHORIZED IN §5739.13 R.C., IS A JUDGMENT UPON WHICH A CERTIFICATE OF JUDGMENT MAY BE FILED — §§5739.13, 2329.02, R.C.

SYLLABUS:

A judgment for state retail sales tax as authorized in Section 5739.13, Revised Code, is a judgment upon which a certificate of judgment may be filed under the provisions of Section 2329.02, Revised Code.

Columbus, Ohio, February 1, 1961

Hon. Stanley J. Bowers, Tax Commissioner  
Department of Taxation, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A question has arisen in connection with the administration of the Ohio sales tax law, which I am referring to you for your opinion.

“Section 5739.13 of the Revised Code, which pertains to sales tax assessments, provides, in part, as follows:

‘After the expiration of the period within which the person assessed may appeal to the board of tax appeals, a certified copy of the entry of the commissioner making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the vendor’s or consumer’s place of business is located or the county in which the party assessed resides.

‘The clerk, immediately upon the filing of such entry, shall enter a judgment for the state against the vendor or consumer in the amount shown on the entry. The judgment may be filed by the clerk in a looseleaf book entitled ‘special judgments for state retail sales tax’.

‘From the date of the filing of the entry in the clerk’s office, the assessment, which includes taxes and penalty, shall bear the same rate of interest and shall have the same effect as other judgments. Execution shall issue upon such judgment upon request of the commissioner and all laws applica-

ble to sales made under such judgments except as provided in sections 5739.01 to 5739.31, inclusive, of the Revised Code.'

"Your opinion, number 1085, dated January 14, 1960, concerned these same provisions of the law with the question then being the fee applicable to the filing of the sales tax judgment and whether the Department of Taxation was required to pay such fees in advance.

"The problem which now has arisen, primarily from the clerks of the courts of common pleas, concerns the question of whether certificates of judgment may or should be filed in the office of the clerk of common pleas in connection with these sales tax judgments. I therefore request your opinion on the following questions :

- "1. Is the judgment for state retail sales tax, as authorized in the above quoted portion of Section 5739.13 of the Revised Code, a judgment upon which a certificate of judgment may be filed under the provisions of Section 2329.02 of the Revised Code?
- "2. If the answer to the first question is in the affirmative, and considering that your office is responsible for collection of the claims arising from such judgments, would you consider it advisable to order a certificate of judgment on all retail sales tax judgments prior to the forwarding of the claim to your office?

"Your advice on this matter will be appreciated."

A "judgment" is defined in Section 2323.01, Revised Code, as :

"\* \* \* the final determination of the rights of the parties in action. A direction of a court or judge, made or entered in writing and not included in a judgment, is an order."

An "action" is defined in Section 2307.01, Revised Code, as :

"\* \* \* an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense."

A judgment, therefore, is a determination of a person's rights by a court or a judge. The "judgment" entered by the clerk of the court of common pleas under Section 5739.13, Revised Code, however, is a determination (assessment) by the tax commissioner. The legislature, apparently aware that the "judgment" provided for in Section 5739.13, *supra*,

was not a judgment as that word had been theretofore defined, went on to provide in that section as follows: "From the date of the filing of the entry in the clerk's office, the assessment \* \* \* shall have the same effect as other judgments." Since the entry is filed in the office of the clerk of the common pleas court, the "other judgments" referred to in Section 5739.13, *supra*, must mean judgments rendered by that court.

Section 2329.02, Revised Code, provides in part as follows:

"Any judgment or decree rendered by any court of general jurisdiction, including district courts of the United States, within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditors and judgment debtors, the amount of the judgment and costs, the rate of interest, if the judgment provides for interest, and the date from which such interest accrues, the date of rendition of the judgment, and the volume and page of the journal entry thereof.

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Giving the "judgment" authorized in Section 5739.13, *supra*, the same effect as other judgments rendered by any court of general jurisdiction, it is my opinion that a certificate of such judgment may be filed in accordance with the provisions of Section 2329.02, *supra*. The answer to your first question, therefore, is in the affirmative.

In regard to your second question, it should be kept in mind that that judgments are not of themselves liens upon property, but operate as such only pursuant to statute. *McCormick v. Alexander*, 2 Ohio, 66; *Boerner v. Hullinger*, 94 Ohio App., 51. The statute in this case, Section 2329.02, *supra*, provides a simple and convenient method of obtaining blanket judgment liens and preventing dormancy of the judgment. *Souers, Judgment Liens in Ohio*, 16 Ohio St. Law J., 1 (1955). I would consider it advisable, therefore, for you to order a certificate of judgment on all retail sales tax judgments prior to forwarding the claim to my office.

Accordingly, it is my opinion and you are advised that a judgment for state retail sales tax as authorized in Section 5739.13, Revised Code,

is a judgment upon which a certificate of judgment may be filed under the provisions of Section 2329.02, Revised Code.

Respectfully,  
Attorney General  
MARK McELROY

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