From: Barry Brooks

ISSUE: What is the "asset location state" for purposes of asserting a lien against a financial institution account.

Certain assets such as stocks, bonds, and bank accounts most often have two entities who can be considered as having an interest in them that comes with certain obligations attached. For purposes of this memo, the term "owner" will be applied to the individual who is the "creditor", "depositor", "purchaser"; and, the term "holder" will be applied to the "debtor", "payor", or business entity that retains the asset on its books, in its records, or at a physical location. It should be noted at the outset that the term "intangible" has been applied to assets such as stocks, bonds, and notes that may have a physical document associated with the underlying obligation.

The issue of where an intangible asset is "located" has been the subject of considerable litigation. The current analysis appears to be that there may be one location when dealing with an obligation imposed on the "owner" and another when the obligation is imposed on the "holder".

The starting point has consistently been the maxim "*mobilia sequunter personam*" - Movables follow the law of the person. (Black's Law Dictionary)

Tracing the history of the concept, the U. S. Supreme Court in *Blodgett v. Silberman*, 277 U.S. 1, 9-10; 48 S.Ct. 410, 413 (1928) stated:

> At common law the maxim 'mobilia sequunter personam' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

The issue in *Blodgett* was the extent to which the succession taxes of Connecticut would be applied to an owner who was domiciled in Connecticut at the time of his death but had various assets with "holders" in New York. In making almost an item by item determination, the court viewed stocks, bonds, indebtedness notes, and bank account deposits were the intangibles and choses to which the maxim applied. The only significant exception was some bank notes (i.e. paper currency) and coins totaling $287.48 that were physically in a safe deposit box in New York financial institution.

The consistent holdings since *Blodgett* have been when the obligation sought to be enforced is one that the owner or the estate of the owner is liable for, the situs of the asset giving rise to the obligation is that of the owner. From this line of cases, it appears settled that an action to assert and foreclose a lien on an account can, and must, be brought in the state where the owner of the account resides.

See
Farmers Loan & Trust Co., Executor, v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1930)
Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 436 (1930)
First National Bank of Boston v. State of Maine, 284 U. S. 312, 52 S. Ct. 174 (1932)

Another line of Supreme Court cases supports the same conclusion. In *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569 (1977), the court traced the evolution of the Due Process requirements needed for *in rem* and *quasi in rem* jurisdiction starting with *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1878), through *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945) ; *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228 (1958); and *Sniadach v. Family Finance Corp*., 395 U.S. 337, 89 S.Ct. 1820. Noting a long term shift in the thinking regarding the requirements, the court held that asserting *in rem* or *quasi in rem* jurisdiction over property also requires the fundamental fairness and purposeful availment elements associated with personal jurisdiction over the property owner.

Clearly, the assertion and foreclosure of a lien against a bank account for a debt owed by the owner/depositor of the account is a *quasi in rem* action, i.e. an action affecting the specific rights of the owner of the account to the funds in the account. To be able to meet the jurisdictional requirements of *Shaffer*, the action must be brought in a state with personal jurisdiction over the owner with out regard to what state the holder contends the account may be "located" in. It would make no sense that the lien must be asserted or perfected in the holder state but the foreclosure of that lien must take place in the owner state when there has been no contact by the owner with the holder state.

In Texas, it appears the only occasions the courts have had to apply the *mobilla* concept in the context of taxation on the property. Nevertheless, the courts have followed the principle that intangible property follows the owner. A thorough discussion of this concept is found in *Great Southern Life Ins V. City of Austin,* 243 S.W. 778, 781 (Texas 1922) [all citations omitted]:

> Under the common law, 'mobilia sequuntur personam' was a well-established maxim, and personal property of every description was taxable only at the domicile of its owner, regardless of its actual location. This is still the basic principle upon which the taxation of personal property rests. But even prior to the Revolution the principle had been abrogated to the extent that, as between different towns and taxing districts, certain classes of tangible personal property had a taxable situs where employed in business, regardless of the domicile of its owner.
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> As to intangible property, the maxim 'mobilia sequuntur personam' embodies the general principle in relation to its situs for the purposes of taxation. In the absence of controlling circumstances to the contrary, the general rule is that the situs of intangible property for purposes of taxation is at the owner's domicile.
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> It is true that the actual situs of certain classes of visible and tangible personal property, as well as intangible property having similar characteristics, as, for example, money, state and municipal bonds, circulating bank notes, and shares of stock in private corporations, may have a situs for taxation where they are permanently kept, separate and apart from

the domicile of the owner. But the general rule is that property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, has no situs of its own for purposes of taxation, and is therefore assessable only at the place of its owner's domicile, regardless of the actual location of the evidence of the debt or the security named.

It is true that securities may have a business situs, at which they may be taxable, separate and apart from the domicile of their owner. Where they are used in or as capital invested in a business, or as an instrumentality of such business, the state may, by legislation, separate the situs of such property from the domicile of the owner, and give them a situs within the state or taxing district where they exist. In most cases, however, where liability for taxation has been predicated on a business situs, the local business has been maintained through a resident agent. The taxation of intangible property of the character referred to, at a situs other than the domicile of the owner, has usually been based upon an expression of legislative intention to fix a local situs for such purpose. Where there is no such intention, then the maxim that personal property follows the domicile of the owner governs.

CONCLUSION

With respect to asserting a lien against an account where the account owner is the child support obligor, case law seems to be clear that the “asset location state” is the domicile state of the account owner.