

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-94 (5) I
Income Tax
March 21, 1994

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I940105B

On January 5, 1994, a Petition for Advisory Opinion was received from Sturdy Oil Corporation, 9 Bloomingdale Avenue, Saranac Lake, New York 12983.

The issue raised by Petitioner, Sturdy Oil Corporation, is whether a tax lien survives an execution and sheriff's sale of real property.

On July 27, 1983, Petitioner, by confession of judgment, received a judgment against John E. Craig, Jr. and Catherine B. Craig, d/b/a Rainbow Market, filed in the Essex County Clerk's office under index No. 324-83.

On July 27, 1989, the New York State Department of Taxation and Finance filed warrant A-5#5 in the Essex County Clerk's office.

On August 6, 1993, an execution was issued to the Essex County Sheriff on behalf of Petitioner and against John E. Craig, Jr. and Catherine Craig, d/b/a Rainbow Market.

Pursuant to the execution, a sheriff's sale of certain real estate belonging to John E. Craig, Jr. and George W. Rosenvold was sought to satisfy the judgment of Petitioner.

Pursuant to section 5236(c) of the Civil Practice Law and Rules (CPLR), the Essex County Sheriff served the New York State Department of Taxation and Finance with a notice of sale on August 31, 1993.

The New York State Department of Taxation and Finance did not deliver an execution to the sheriff before the sale pursuant to section 5236(e) of the CPLR.

Petitioner purchased the defendant, John E. Craig, Jr.'s, interest in the real estate for \$100 at the sheriff's sale and thereafter received a deed from the sheriff.

Section 5236(c) of the CPLR states:

(c) **Notice of sale.** A printed notice of the time and place of the sale containing a description of the property to be sold shall be posted at least fifty-six days before the sale in three public places in the town or city in which the property is located ... A list containing the name and address of the judgment debtor and of every judgment creditor whose judgment was a lien on the real property to be sold and of every person who had of record any interest in or lien on such property forty-five days prior to the day fixed for the sale shall be furnished the sheriff by the

TSB-A-94 (5) I
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March 21, 1994

judgment creditor, and each person on the list shall be served by the sheriff with a copy of the notice by personal delivery or by registered or certified mail, return receipt requested, at least thirty days prior to the day fixed for the sale....

Section 5236(e) of the CPLR states:

(e) **Effect of notice as against judgment creditors.** A judgment creditor duly notified pursuant to subdivisions (c) or (d) who fails to deliver an execution to the sheriff prior to the sale shall have no further lien on the property and, except as against the judgment debtor, no further interest in the proceeds of the sale.

Herein, the New York State Department of Taxation and Finance filed a warrant in the Essex County Clerk's office on July 27, 1989. Pursuant to the execution issued, on August 6, 1993, to the Essex Country Sheriff on behalf of Petitioner, a sheriff's sale of certain real estate belonging to John E. Craig, Jr. and George W. Rosenvold was sought to satisfy the judgment of Petitioner. Pursuant to section 5236(c) of the CPLR, on August 31, 1993 the Essex Country Sheriff served the New York State Department of Taxation and Finance with a notice of sale of such real property on October 4, 1993.

Since the New York State Department of Taxation and Finance, as a judgment creditor against John E. Craig, 3r. and/or Catherine B. Craig, was duly notified pursuant to section 5236(c) of the CPLR of the sale of such real estate belonging to John E. Craig, Jr. and the Department of Taxation and Finance failed to deliver an execution to the sheriff prior to the sale, pursuant to section 5236(e) of the CPLR, the New York State Department of Taxation and Finance has no further lien on such property sold and no further interest in the proceeds of the sale.

DATED: March 21, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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