

Abstention in a Tax Case? The IRS Meets *Colorado River*.

Federal courts are supposed to hear any case that is properly before them. But there are exceptions: a series of abstention doctrines govern situations in which it is proper to refuse to hear a case. Describing the various doctrines is better suited to a book than a blog, but in broad brush strokes most of them involve competing federal and state interests where a state interest is important enough that a federal court should stay its hand instead of acting. Recently, the United States District Court for the Eastern District of New York issued a very interesting opinion in a tax collection case brought by the government; the district court concluded that it should abstain from hearing the government's case under *Colorado River* abstention. *United States v. Blake*, 2013 U.S. Dist. LEXIS 57375 (E.D.N.Y. Apr. 20, 2013).

Colorado River abstention, named for *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), deals with competing federal and state cases; its focus is not on preservation of important state interests, but on conservation of federal judicial resources. While normally the pendency of a related state case is not a bar to federal jurisdiction, in *Colorado River*, the Supreme Court held that there may be "exceptional circumstances" in which a federal court should abstain to conserve judicial resources. 424 U.S. at 813, 817. The basic idea is that a pending state action will deal comprehensively with the dispute so the federal court should not deal with it.

If there are parallel state and federal cases, then a six part test governs *Colorado River* abstention; the test requires courts to consider the following factors:

- Does the case involve a *res* over which a court has already assumed jurisdiction?
- Is the federal forum more convenient?
- Will a stay or dismissal of the federal case avoid piecemeal litigation?
- Which case was filed first and how far along is it?
- Is the key issue in the case governed by federal law?
- Are state procedures adequate to protect the plaintiff's federal rights?

See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 19-27 (1983).

Blake involved an estate that was an executor's nightmare. The testator died in 1989; the IRS made an estate tax assessment in 1991, but the estate was illiquid and could not pay the tax. 2013 U.S. Dist. LEXIS 57375, slip op. at *2-*3. The IRS served a proof of claim on the executor, the testator's daughter, but this did not result in payment of its claim. In 1994, the IRS issued another assessment, and the estate entered into an installment agreement for the relevant taxes in 1995. *Id.* at *5-*6. In 2005, the executor died, and the estate defaulted on the installment agreement. *Id.* at *6-*7. The successor executor, the testator's granddaughter, received title to two properties that had been held by the estate, but the properties were subject to federal tax liens. *Id.* at *7-*9. Consequently, the successor executor, defendant in *Blake*, filed a quiet title action in state court in February 2010, naming the United States as a defendant and seeking a determination that any claim against the real estate was time-barred. *Id.* at 10.

In the quiet title action, the plaintiff initially sought a default judgment, which was not granted. The government never sought removal, and the plaintiff filed an appeal of the default judgment. *Id.* at *10-*11. Over two years later, the government started an action in federal court against the

successor executor seeking to collect the assessed estate taxes, which gave rise to the abstention motion.

The Eastern District first assessed whether the case before it and the quiet title action were truly parallel cases, concluding that they were because a disposition of the quiet title action would also dispose of the tax collection suit before it. *Id.* at *28. Having concluded that the actions were parallel, the court then turned to the six factor test that governs *Colorado River* abstention. Satisfied that the two courts were equally convenient and that the government's interests would be protected in state court, U.S. District Judge Arthur D. Spatt focused on the remaining factors.

First, he concluded that the state court had assumed jurisdiction over a *res* in the quiet title action, a factor that strongly weighs in favor of abstention. *Id.* at *31. Second, he concluded that abstaining would avoid duplicative litigation. *Id.* at *32. Third, Judge Spratt noted that the quiet title action was far more advanced: discovery was ongoing and an appeal over the refusal to grant a default judgment was pending. *Id.* at *32-*33. In this connection, he also indicated that the government's failure to remove the action weighed heavily in favor of abstention. *Id.*

The final factor was particularly interesting: the basic question in both cases was whether the government's claim was barred. The statute of limitations for a tax collection action is a question where federal law would seem to supply the rule of decision, which is a factor that would weigh against abstention. But state law had a significant role because the ten year statute for collection has a tolling provision in Section 6502(a) of the Code for situations where a timely action is filed, and the government asserted that the service of a proof of claim on the original executor fell within this exception. The government also claimed tolling based upon Section 6503(b) because the assets of the estate were under the control of the Surrogate's Court. In Judge Spratt's view, these issues made state law controlling, even though the relevant statute of limitations was federal because state law would determine whether service of the proof of claim was the commencement of an action and would also determine the period when the assets were subject to the control of the Surrogate's Court. *Id.* at *35-*37. Consequently, the court decided that abstention was appropriate.

This is an unusual case. The government apparently mishandled the matter, as a prompt removal petition probably would have precluded a successful abstention motion. The district court's conclusion that state law provided the rule of decision also has broad implications, since federal tax liens attach to a taxpayer's interests in property as determined under state law. While the court's reasoning seems sound, I wonder whether it will prevail in subsequent cases.

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