

1975 S.C. Op. Atty. Gen. 184 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4106, 1975 WL 22402

Office of the Attorney General

State of South Carolina

Opinion No. 4106

September 4, 1975

\*1 The Commission may levy upon a joint bank account to collect taxes of a joint depositor if the depositor can make demands individually for the funds in the account.

TO: Mr. Frank S. Newman  
Chief Warrant Officer

#### QUESTION

Does the Commission have the authority to enforce the collection of taxes by levying upon a joint checking account naming the delinquent taxpayer as a depositor if the warrant for distraint is against only one of the depositors of the account?

#### STATUTES

Sections 65–2832, 8–171 and 8–602, Code of Laws of South Carolina, 1962.

#### DISCUSSION

It is customary for a depositor or depositors to execute an account card upon the opening of an account in a bank or savings and loan association. This has been held to create a contractual relationship between the depositors and the bank or the loan association. [Hawkins v. Thackston](#), 224 S. C. 445, 79 S. E. 2d 714; [Gilford v. South Carolina National Bank](#), 257 S. C. 374, 186 S. E. 2d 258; [Sawyer v. Mabus](#), 107 S. C. 369, 92 S. E. 1029; [Smith v. Planters Savings Bank](#), 124 S. C. 100, 117 S. E. 312; 10 Am.Jur.2d, [Banks](#), Sec. 338.

In the [Hawkins](#) case, ownership of funds in a joint-survivor savings account in a loan association was in issue. The specific question presented was whether or not the surviving depositor was entitled to the funds or whether or not the funds were property of the estate of the deceased depositor. The court held that the surviving depositor was entitled to the funds in that the evidence presented made it clear that it was the contractual intent of all concerned in the transaction that the survivor of the joint depositors should take the balance of the deposit remaining at the time of the death of the other. Section 8–171 and Section 8–602 of the Code were stated to sanction the agreement between the depositors but were not conclusive of the rights existing between them. The court in reaching its conclusion said that the creation of the joint account did not make a valid gift—*inter vivos* or *causa mortis*. And it was further stated that the account itself, being joint, did not constitute an effective testamentary disposition of the funds.

In the [Gilford](#) case a similar conclusion was reached based on the theory of [Hawkins](#). The court further commented that the [Hawkins](#) case created a presumption that the survivor in a joint survivorship account is entitled to the funds in the account and that such presumption will stand unless rebutted by evidence to the satisfaction of the trier of the facts.

The fact that a person is named joint owner of an account is not therefore conclusive that the funds belong to the person. There is little doubt, however, that a depositor of a joint account with authorization to withdraw funds on his signature

has all incidence attaching to ownership under the present Section 8-171 and Section 8-602 of the South Carolina Code. The bank has an obligation to pay the funds upon demand and is released from liability when payment is made. To this extent the bank is 'owing' to its depositor. It is the opinion of this office, therefore, that Section 65-2832 provides authority to the Commission to levy upon the funds in these accounts.

CONCLUSION

\*2 Section 65-2832 of the Code authorizes the Tax Commission to levy upon joint bank accounts where any one of the depositors alone may make demand for the funds. The deposit of funds in a joint account does not conclusively establish ownership of the funds and a depositor may not be entitled to the funds although he may make demand upon the bank for the funds. If it is shown that a taxpayer is not entitled to the funds in a joint bank account the funds cannot be used to satisfy the taxpayer's liability.

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