QUASI-ESTOPPEL EFFECT OF TAX RETURNS

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Clients file tax returns and other certified documents with governmental agencies. All information in tax returns is submitted "under penalties of perjury" and must be "true and correct to the best" of the filer's knowledge. Documents submitted to other governmental agencies contain similar language. That opens the door for an adversary to claim that the representation in the tax return or other document is binding. Unfortunately, as noted by one judge, fudging one's tax return is "as American as apple pie."[1] Perhaps the document fails to record consideration on the sale of real property, overstates the consideration, characterizes an asset as one thing rather than another, or fails to report income.

A party seeking to use a tax return or other document to prove a fact against an adverse party is attempting to apply a "quasi-estoppel" effect to such document.[2] Quasi-estoppel differs from standard estoppel, because it does not require a misrepresentation or reliance by the party asserting a quasi-estoppel claim.[3] The party asserting quasi-estoppel effect to a document filed with the government was not the recipient of the document and, therefore, cannot claim reliance.

One might assume that any statements made under penalties of perjury in a tax return or other document would have inevitable preclusive effect. Some of the cases use broad language intimating as much.[4] In reality, there are several lines of defense a party can use to avoid a quasi-estoppel effect from a representation made in a tax return or governmental submission.

A party seeking to use a tax return or other document to prove a fact against an adverse party is attempting to apply a "quasi-estoppel" effect to such document. Quasi-estoppel differs from standard estoppel, because it does not require a misrepresentation or reliance by the party asserting a quasi-estoppel claim.

The first line of defense is to emphasize the aforementioned fact, *i.e.*, an inconsistent statement in a tax return or governmental document does not *ipso facto* estop the party who made the statement. As noted, one can easily cite language to that effect in several cases.[5] But all of the cases -- even those ostensibly applying quasi-estoppel reflexively -- do so after a thorough review of the evidence.[6] Such a review is mandatory because quasi-estoppel should not be mechanically or rigidly applied, but is instead "highly fact-specific", and the inconsistency between the document and the party's position at trial must rise to the level of "threaten[ing] the integrity of the judicial process" before quasi-estoppel may be applied.[7] It is also said to be an "inherently flexible" doctrine.[8] Corpus Juris Secundum goes further and states that an element of unconscionability "must be present" in order for the doctrine to apply.[9]

Roth v. Speilman[10] recognized that principle and held that a party was not estopped from challenging the existence of a loan notwithstanding the fact that certified financial statements submitted to the United States Department of Housing and Development recited the existence of the loan. Instead, the court held that the statement created—but was not determinative—of an issue of fact.[11]

A second line of defense, endorsed by the Court of Appeals in 1997, is the argument that rules involved in a "regulatory sphere" cannot bind relations between parties outside of that sphere. In *Heisler v. Gingras*,[12] the Court declined to use a publicly filed corporate document to estop a party from taking a position inconsistent with the filed document. The filing (which was not apparently sworn to) stated a fact which was belied by significant contrary evidence. Similarly, in *Vick v. Albert*,[13] the court held that a statement in an estate

tax return that deviated from that in a personal tax return did not create a quasi-estoppel, because the purposes of each return differed. Significantly, what is defined as one thing in a tax return might not apply to the issues actually being litigated between the parties.

The third defense is a powerful one, *i.e.*, the substance of a transaction may prevail over statements made in a tax return. In *PL Diamond v. Becker-Paramount LLC*,[14] the court held that a representation made in a real property transfer tax form did not estop a party, finding that "the substance rather than the form of a transaction is controlling."[15] In other words, the "emphasis should be on economic reality",[16] rather than boxes checked off on a form. The court also recognized that parties may structure transactions to minimize tax consequences regardless of tax reporting requirements.[17] Having said that, a court may also apply quasi-estoppel if the representation made in the tax return provided a significant tax savings.[18]

The fourth line of defense is that quasi-estoppel "does not apply if the initial statement was the result of a good faith mistake or an unintentional error."[19] In *Paulino, supra*, the court declined to apply quasi-estoppel and instead noted that an inconsistent representation as to a party's residence was asserted to be an accountant error.[20] Most clients have their taxes performed by professionals and rely on them to correctly represent transactions. It would be inequitable to bind a party to a tax return containing an oversight by the party's accountant.

Long story short, the use of a tax return or certified document does not have quasi-estoppel effect until the party claiming estoppel also has provided other evidence which renders the application of quasi-estoppel appropriate.

Endnotes

1 *Meyer v. Insurance Co. of America*, 1998 WL 709854 *1 (S.D.N.Y Oct. 9, 1998).

2 *Paulino v. Paulino*, 170 A.D.3d 629, 97 N.Y.S.3d 74 (N.Y. App. Div., 1st Dep't 2019).

3 31 Corpus Juris Secundum ("CJS"), *Estoppel and Waiver*, § 146 (online ed. 2022).

4 *Zemel v. Horowitz*, 11 Misc. 3d 1058(A), 815 N.Y.S.2d 496, *5 (Sup. Ct., N.Y. Cnty. 2006) ("[C]ourts have consistently held that a party is estopped from adopting in court a position contrary to that previously asserted on his or her tax return.").

5 *Id.*

6 For example, while Justice Giacomo was adamant that he did not need to inquire into the intent of parties and other evidence before applying quasi-estoppel, his opinion nonetheless includes an exhaustive factual analysis of the transaction at issue. *Mahoney-Buntzman v. Buntzman*, 13 Misc. 3d 1216(A), 824 N.Y.S.2d 755, *9 (Sup. Ct., Westchester Cnty. 2006), *aff'd*, 51 A.D.3d 732, 858 N.Y.S.2d 698 (N.Y. App. Div., 2d Dep't 2008), *aff'd as modified*, 12 N.Y.3d 415, 881 N.Y.S.2d 369 (2009). *See also Capizzi v. Brown Chiari LLP*, 65 Misc. 3d 1202(A), 118 N.Y.S.3d 377 (Sup. Ct., Erie Cnty. 2019) (citing *Mahoney-Buntzman* for the general proposition that tax returns bind litigants, while noting that the court conducted a thorough evidentiary analysis after 20 days of trial).

7 *New York Tile Wholesale Corp. v. Thomas Fatato Realty Corp.*, 35 Misc. 3d 1206(A), 951 N.Y.S.2d 87 (Sup. Ct., Kings Cnty. 2012).

8 31 CJS, *Estoppel and Waiver*, § 146 (online ed. 2022).

9 *Id.*

10 25 A.D.3d 383, 807 N.Y.S.2d 81 (N.Y. App. Div., 1st Dep't 2006).

11 25 A.D.3d at 384, 807 N.Y.S.2d at 82. *See also Mikkelson v. Kessler*, 50 A.D.3d 1443, 857 N.Y.S.2d 311 (N.Y. App. Div., 3d Dep't 2008) (genuine fact issues prevented estoppel from being applied as a matter of law); *Davis v. Maloney*, 49 A.D.3d 385, 854 N.Y.S.2d 355 (N.Y. App. Div., 1st Dep't 2008) (filed tax certificate was evidence of the intended use of property but not determinative).

12 90 N.Y.2d 682, 688, 665 N.Y.S.2d 59, 61-62 (1997).

13 47 A.D.3d 482, 849 N.Y.S.2d 250 (N.Y. App. Div., 1st Dep't 2008).

14 *PL Diamond LLC v. Becker-Paramount LLC*, 16 Misc. 3d 1105(A), 841 N.Y.S.2d 828 (Sup. Ct., N.Y. Cnty. 2007).

15 *Id.* at *7.

16 *Id.*

17 *Id.* at *10.

18 *Ginor v. Landsberg*, 159 F.3d 1346, *1 (2d Cir. 1998).

19 *New York Tile Wholesale Corp.*, *supra*, at *7.

20 *Paulino,* 170 A.D.3d at 630, 97 N.Y.S.3d at 75.

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