

170.0001

Memorandum

To: Mr. Bill Ragle
Collection Section - MIC:55

Date: December 21, 1994

From: Thomas Cooke
Staff Counsel

Subject: V--- E--- Company
Account Nos. SR -- XX-XXXXXX
SR -- XX-XXXXXX
SR -- XX-XXXXXX

This office has received your memorandum dated December 7, 19XX in which you asked how the bankruptcy of V--- E--- Company affects the tolling of the Board's statutes and, specifically, when does the statute run for recording a lien.

Government Code section 7172(a) provides that a state tax lien is extinguished unless a Notice of State Tax Lien is filed or recorded within the ten-year period that a statutory state tax lien is in effect.

If the ten-year period has not expired when the taxpayer files its bankruptcy petition, once the bankruptcy "automatic stay" is lifted, the Board will have the remainder of the ten-year period, or a 30-day period following the lifting of the stay, whichever is longer, to file or record a Notice of State Tax Lien (see 11 U.S.C. § 108(c); In re Morton [2nd Cir. 1989] 866 F.2d 561.)

V--- E--- Company filed Chapter 11 bankruptcy on February XX, 1982 and the debtor's Plan of Reorganization was confirmed on March XX, 1983. A later Plan of Reorganization was confirmed on December XX, 1985. Therefore, since the original ten-year statutory period had not "run" when the automatic stay was "lifted", there is no federal extension of the state limitations period.

On March 27, 1992, the Board filed a Notice of State Tax Lien in --- County for two liabilities: A self-assessed pre-petition liability from 1/1/82 to 2/18/82 (when the taxpayer filed bankruptcy) and a post-confirmation liability from 7/1/87 to 7/31/87.

It is our opinion that the Notice of State Tax Lien recorded in --- County was timely recorded for the post-confirmation liability, the post-confirmation liability was not "dealt with" in the taxpayer's Plan of Reorganization and the Board may attempt to collect the post-confirmation liability from V--- E--- Company or from any party who is responsible for V--- E---'s taxes.

It is also our opinion that the pre-petition liability was not "due and payable" until April XX, 1982 (pursuant to Rev. & Tax. Code § 6757(b)(1)), that the Notice of State Tax Lien was timely filed for the pre-petition liability and that the Board may collect the pre-petition liability from any person other than V--- E--- Company who is liable for V--- E--- Company's taxes.

Garg may prevent a lawsuit against a guarantor at this stage.

TJC:plh

cc: Mr. Rick Slater - MIC:55
Mr. Gordon Adelman - MIC:82