

Memorandum

170.0002.075

To : R. A. Slater
Supervisor of Collections (MIC:55)

Date: August 29, 1995

From : Thomas J. Cooke
Staff Counsel

Subject: Notice of State Tax Lien

Gary Jugum has requested that I respond to your memorandum to him dated August 10, 1995, concerning the above subject.

In your memorandum, you state that the case of In re Carlson, 292 F.Supp. 778 (1968) held that a lien recorded pre-petition attaches to pre-petition property and thus survives the debtor's discharge.

You ask if the Board may extend a pre-petition lien for an additional 10 year period as provided by Government Code Section 7172(c).

Generally, a self-assessed tax liability will be "dischargeable" in a taxpayer's bankruptcy if it becomes "due and payable" more than three years prior to the filing of the taxpayer's bankruptcy petition. 11 U.S.C. §§ 523(a)(1)(A); 507(a)(8)(A). However, even if a tax liability becomes dischargeable, a tax lien filed pre-petition survives a taxpayer's discharge if the lien attaches pre-petition to property owned by the taxpayer. In re Carlson, 292 F.Supp. 778 (1968).

If a tax liability is not dischargeable in a taxpayer's bankruptcy proceeding, it is our opinion that the Board may extend a lien pursuant to Government Code section 7172(c) as if no bankruptcy petition had been filed.

If a tax liability has been discharged in a taxpayer's bankruptcy proceeding, it is our opinion that the Board may extend a pre-petition lien pursuant to Government Code section 7172(c) only if the original lien attached pre-petition to property owned by the taxpayer, the taxpayer continues to own the pre-petition property at the time that the lien is to be extended and the extension of the lien is restricted to the pre-petition property owned by the taxpayer. A pre-petition lien does not attach to after-acquired property when the taxpayer has received a discharge of the tax liability. California State Board of Equalization v. Carlson, (1970) 423 F.2d 715.

TJC/cmm