

M e m o r a n d u m**170.0002****To:** Rick Slater
Collection Section**Date:** October 16, 1992**From:** Thomas Cooke
Tax Counsel**Subject:** Inoperative Revocation/Bankruptcy

In your memorandum dated September 28, 1992, addressed to Gary Jugum, you requested an opinion from the Legal Division as to the procedures to be followed when one partner of a partnership files bankruptcy.

Initially, it is assumed that there is a true partnership. Two or more individuals have contributed their money and efforts to start a business and all property is held in the name of the partnership. A husband and wife may often consider themselves in a partnership. However, their interests are usually community property rather than partnership interests.

In the true partnership, the entity has an existence separate from that of the partners. If the Board issued a permit to a partnership, the filing of bankruptcy by a partner will not affect the regulation of the partnership. There is no "automatic stay" on the partnership property. Therefore, the provisions of C.P.P.M. section 751.090 are not affected when a partner in his/her individual capacity files bankruptcy. The partnership property may be levied upon for the partnership's tax liability.

However, the Board should file a claim in the bankruptcy proceeding of a partner for the full partnership debt. Each partner is liable in his/her individual capacity for the partnership's debts. All of the other nonfiling partners are also responsible for the partnership debt and no "automatic stay" prevents the Board from the collection of partnership debt from these partners.

If there are grounds for the revocation of a partnership sales tax permit, the filing of bankruptcy by one partner as an individual should have no effect on the Board's decision to revoke the permit. If the partnership has been issued a permit and it owes taxes, the entire partnership property and the personal property of the nonfiling partners may be levied upon to pay the debt.

You also asked as to the procedure to be followed when a taxpayer files bankruptcy after an individual's sales tax permit is revoked and a criminal complaint is filed by the Board. Criminal actions are not affected by the "automatic stay of a bankruptcy court" (U.S.C. § 362(b)(4)). As long as the Board's intent is to stop violations of the law and not to induce payment of a tax liability, the commencement and continuation of criminal charges may proceed after the taxpayer has filed bankruptcy. However, the revocation must be made inoperative after the bankruptcy filing.

TJC:kl