

Memorandum

170.0006.250

To : Audit Program Manager

Date: October 30, 1996

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
CalNet 485-6496

Subject: D--- C--- T--- S---, Inc.
Account No. SR --- XX-XXXXXX-030

Gary Jugum has requested that I respond to your memorandum to him dated October 16, 1996 concerning the above taxpayer.

In your memorandum, you state that on January 27, 1994, a Notice of Determination was issued to the taxpayer for the period October 1, 1990 through June 30, 1993. Another Notice of Determination was issued for inconsistencies contained in the taxpayer's return for the fourth quarter of 1992. Timely petitions have been filed and are pending. During the course of the processing of these cases, criminal fraud proceedings against Mr. S--- K--- were instituted for calendar year 1991 on these liabilities. Subsequently, Mr. K--- entered a plea of no contest to felony violation of Revenue and Taxation Code sections 7153.5 and 9354.5. As a condition of the no contest plea, defendant agreed to entry of an order for restitution for past taxes, interest and penalties due and assessed for the 1991 calendar year for both state excise and sales taxes totaling \$316,301.00.

You state that the Department is concerned on how the liabilities determined against the corporate entity are affected by the order for restitution against Mr. K--- (apparently as an individual).

The corporation's tax liability has been assessed (either by return or determination) pursuant to the civil tax provisions of the Revenue and Taxation Code. The corporation's tax liability is not affected by the prosecution of Mr. K--- (or even the corporation) for criminal violations of the Revenue and Taxation Code. The Board may continue the administrative review of the determinations issued against a corporation while criminal proceedings are pending against the corporation or its officers or shareholders. If any tax liability is final, the Board may collect that liability while criminal charges are proceeding against a corporation or its officers or shareholders.

If a corporation or its officers or shareholders have been convicted of a criminal offense and have been ordered to pay restitution, the restitution order is a court order directed to the convicted person or entity requiring the payment of restitution as a condition of probation in the criminal case. The restitution order has no effect on the liability imposed pursuant to the civil tax provisions of the Revenue and Taxation Code. The Board may continue to collect the full amount of tax liability imposed on the taxpayer even if a restitution order has been issued requiring the taxpayer or an officer or shareholder to make specific payments.

In this case, Mr. K--- was ordered to pay the corporate liability for 1991 as a condition of his probation. Any payments received by Mr. K--- pursuant to the restitution order should be applied to the corporate tax liability for calendar year 1991. The Board may continue any collection action against D--- C--- T--- S---, Inc. during the period that Mr. K--- is ordered to make the restitution payments. If Mr. K--- fails to make the restitution payments ordered, the sole remedy against Mr. K--- is through the criminal court system since Mr. K--- has no personal civil tax liability.

TJC/cmm

cc: Mr. Vic Anderson,
Supervisor, Petitions Section (MIC:38)
Mr. James Lehmann,
Supervisor, Special Investigations Section (MIC:86)
Fresno District Administrator (DH)