

M e m o r a n d u m**170.0007.002**

To : Mr. Vic Anderson
Supervisor, Petitions Section

Date: August 1, 1996

From : Thomas J. Cooke
Tax Counsel

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

Subject: S--- F---
Account No. SR -- XX-XXXXXX-010

Gary Jugum has requested that I respond to your memorandum to him dated July 29, 1996 concerning the above taxpayer. You ask if the successor liability imposed on the taxpayer is discharged by his bankruptcy filing.

In your memorandum, you state that the taxpayer filed a Chapter 7 "no asset" bankruptcy action on November 17, 1993 and was subsequently discharged on March 23, 1995. The taxpayer's liability results from a Notice of Successor Liability issued on January 27, 1995 as a result of the taxpayer's purchase of assets from M--- I--- T--- Corp. (Account No. SR -- XX-XXXXXX), the predecessor to Mr. F---. The determinations cover the periods January 1, 1986 to December 31, 1988; January 1, 1992 to March 31, 1992; and April 1, 1992 to June 30, 1992, and were issued to the predecessor corporation on April 26, 1990, January 27, 1993 and June 17, 1993, respectively.

A review of the petition file indicates that Mr. F---'s liability arises because he purchased the corporate assets pursuant to an agreement dated August 28, 1992. Prior to this date, Mr. F--- had no personal liability for the corporation's liability and his personal liability arose only as of that date. When Mr. F--- filed his bankruptcy petition on November 17, 1993, Mr. F---'s personal liability arose from a transaction occurring 15 months prior to the bankruptcy filing.

11 U.S.C. section 507 establishes priorities (and makes non-dischargeable),

"(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for -

"(A) a tax on or measured by income or gross receipts -

...

“(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(c) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

...

“(E) an excise tax on -

“(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

“(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;”

The tax was not “assessed” against Mr. F--- prior to the filing of his bankruptcy petition and will be entitled to priority if the tax is subject to 11 U.S.C. section 507(a)(8)(A) and the “transaction” (i.e., the purchase of the corporate assets) had not occurred more than three years before Mr. F--- filed his bankruptcy petition and will be entitled to priority if the tax is subject to 11 U.S.C. section 507(a)(8)(E). Therefore, it is our opinion that the filing of Mr. F---’s bankruptcy petition and subsequent discharge did not discharge his successor liability. There is some evidence that Mr. F--- had listed the Board as a creditor in his bankruptcy petition. 11 U.S.C. section 523(a)(1)(A) provides that a discharge under Chapter 7 does not discharge an individual debtor from a tax “of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed.”

TJC/cmm
Attachment

cc: Mr. Rick A. Slater - w/attachment (MIC:55)
Mr. Carl Bessent - w/attachment (MIC:85)
San Diego District Administrator (OH)