

**M e m o r a n d u m****170.0007.004**

To : Mr. Steve Adams  
Supervising Tax Auditor  
Petitions Section

Date: April 8, 1998

From : Thomas J. Cooke  
Tax Counsel

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Subject: F--- T--- Inc.  
Permit Nos. SR -- XX-XXXXXXX-010/020  
FS -- XX-XXXXXXX-001

Gary Jugum has requested that I respond to your memorandum to him dated April 3, 1998 concerning the above taxpayer.

In your memorandum, you state that a Notice of Determination was issued to the taxpayer for the period July 1, 1987 to June 30, 1990 on October 22, 1990. A timely Petition for Redetermination was filed on November 20, 1990. The liability for extax purchases and clerical errors consists of \$63,081.62 tax, \$11,930.33 interest and a ten percent (10%) negligence penalty of \$6,308.18. In addition, a Dual Determination for the period July 1, 1987 to December 31, 1990 was issued on March 5, 1993. This dual was subsequently converted to prime in accordance with the recommendation set forth in the Decision and Recommendation dated February 6, 1995. A timely petition was also filed. The liability for extax purchases consists of \$28,222.25 tax, \$7,925.72 interest, a ten percent (10%) failure to file penalty of \$2,822.25 and a fifty percent (50%) intent to evade the tax penalty of \$14,111.13. The taxpayer has also filed a claim for refund for the period January 1, 1988 to June 30, 1990 in the amount of \$74,076.99.

On April 20, 1995, the taxpayer filed Chapter 11 bankruptcy. On January 8, 1996, the taxpayer's plan of reorganization was confirmed. You ask that the Legal Section review the bankruptcy issues and provide guidance on how the Board should proceed on the taxpayer's petitions and on the claim for refund.

On July 31, 1995, the Board filed its claim in the taxpayer's bankruptcy action. The priority claim was for the period of July 1, 1987 to April 20, 1995 in the sum of \$176,663.40. On or about December 3, 1996, the Board was served with a bankruptcy court order sustaining the F--- L--- Committee's objection to the Board's claim and disallowing the claim in its entirety. The Board has no record of being served with an objection to its claim. On or about December 23, 1996, the Board obtained a copy of the Notice of Objection to Claims purportedly mailed to the Board on September 5, 1996. The Objection requested the court rule that

numerous claims of the debtor be disallowed on the basis that “the Committee has determined that the Claims are not supported by the books and records of the Debtor and are not supported by evidence supplied by the Claimant.”

Article XI, Section A of the taxpayer’s confirmed plan of reorganization states:

“Except as provided in the Confirmation Order or the Plan, the rights afforded under the Plan are in exchange for, and in complete satisfaction, discharge and release of, all of the Claims against, and Interests in, the Debtor. Except as provided in the Confirmation Order or the Plan, the confirmation of the Plan shall (1) discharge the Debtor from all Claims and other debts that arose before the Confirmation Date . . . .”

11 U.S.C. section 1141(d)(3) provides:

“The confirmation of a plan does not discharge a debtor if -

“(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

“(B) the debtor does not engage in business after consummation of the plan; and

“(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.”

11 U.S.C. section 727(a) denies a discharge to a corporation in a Chapter 7 bankruptcy.

The taxpayer’s plan of reorganization called for the liquidation and dissolution of the taxpayer’s business. Assuming that the taxpayer did not engage in business after the consummation of the plan, it is our opinion that the tax liabilities were not discharged by the taxpayer’s bankruptcy action despite a provision in the plan that the debtor would be granted a discharge. See *In re SIS Corp.* 120 B.R. 93 (Bankr. N.D. Ohio 1990).

It is our recommendation that the Board proceed to hear the taxpayer’s petitions and claim for refund.

TJC/cmm  
Attachments

cc: Out-of-State District Administrator (OH)