

M e m o r a n d u m**170.0007.085**

To : Mr. Dennis Smith
Supervisor, Centralized Collection Section -
MIC:55

Date: August 19, 1996

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
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Subject: C--- F--- P--- Ltd.
J--- S--- and R--- M---
Account No. SP -- XX-XXXXXX

Your memorandum dated August 8, 1996 addressed to the Legal Division and concerning the above taxpayers has been forwarded to me for response.

In your memorandum, you state that C--- F--- P---, Ltd. purchased aircraft -XXX- in October, 1984 and registered it with the Federal Aviation Administration in the name of this partnership. The FAA bill of sale and the FAA registration list J--- S--- and R--- M--- as the partners of this partnership. A Notice of Determination was issued to C--- F--- P--- Ltd. on June 23, 1986 for use tax on the aircraft. On March 9, 1987, the name on the Board account was changed from C--- F--- P---, Ltd. to J--- S--- and R--- M---. The name was changed because the partnership had not paid the liability, and it was believed that the partnership entity was one and the same as the two individuals. Dual determinations have never been issued to the partners as individuals, but, over the years, liens have been filed in their names as individuals, and other collection action has been taken against them.

You ask if the Board's Notice of Determination in the name of C--- F--- P---, Ltd. created a legal liability against the partners as individuals, i.e., was it legal to change the name and proceed with collection action against the individuals without issuing dual determinations?

When a partnership applies for a seller's permit, the application should state the name of the partnership, if any, and list all of the partners in the partnership. Revenue and Taxation Code section 6066 states that an application for a seller's permit on behalf of a partnership shall be signed by a partner. It is our opinion that a partner who signs an application for a seller's permit on behalf of a partnership will bind the partnership and the other partners for the partnership's tax liability as if the other partners had individually signed the application. Any Notice of Determination issued for a partnership liability should ideally list the name of the partnership, if any, and the name of each individual partner. As a practical matter, this is frequently not possible because of the limitations of the system that prepares the Notice of Determination. It is our opinion that if the partnership is clearly identified by name designation (or the listing of one or more partners) and the partnership account number in the Notice of Determination, it will create a liability against the partnership and the individual partners whether or not all of the partners are listed in the Notice of Determination. No dual determinations are necessary for any unlisted partners.

Frequently, a Notice of Determination must be issued for tax due on a vehicle, vessel or aircraft when the purchaser has not previously applied for a permit. It is our opinion that if the Board discovers that a vehicle, vessel or aircraft has been purchased in the name of a general or limited partnership, the Board may issue a Notice of Determination in the name designation of the general or limited partnership and the general partners will be liable for partnership tax on the basis of this Notice of Determination if the Board has sufficient documentary evidence to show that the individuals were, in fact, at that time, general partners of the entity which purchased the vehicle, vessel or aircraft. In that case, no dual determinations need be issued to the individuals.

The documentation in the file clearly indicates that J--- S--- and R--- M--- were general partners of C--- F--- P---, Ltd. at the time that the aircraft was purchased. The Board did not act improperly when it changed the account name from C--- F--- P---, Ltd. to J--- S--- and R--- M--- and proceeded with collection action against these individuals without issuing dual determinations to them.

You also state in your memorandum that a lien was filed on aircraft -XXXXX which is owned by C--- C--- Leasing Ltd. You ask if the Board can legally encumber this aircraft or should the Board's lien be released?

The Aircraft Bill of Sale for aircraft -XXXXX shows the purchaser as C--- C--- Leasing, Ltd., a California limited partnership, with R--- M. M--- as its sole general partner. J--- V. S---'s name was listed only as part of the mailing address.

The taxpayer was listed on the lien which the Board filed for this purchase as:

“The partnership consisting of J--- V. S--- and R--- M--- Individually and as Copartners Doing Business as C--- C--- Leasing Ltd. and/or C--- F--- P---.”

We have been unable to locate a Notice of Determination issued for the purchase of this aircraft.

Assuming that a timely Notice of Determination was issued to C--- C--- Leasing Ltd., the Board may file a lien against that entity and its general partner R--- M---. J--- V. S--- and C--- F--- P--- should be released from the lien unless the Board can show that they co-purchased this aircraft.

TJC/cmm

cc: Mr. Ronald L. Dick (MIC:82)
Mr. Rick A. Slater (MIC:55)