

170.007.095

Memorandum

To: Mr. Rick A. Slater
Supervisor of Special Procedures

Date: October 30, 1997

From: Thomas J. Cooke
Tax Counsel

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

Subject: REDACTED TEXT
Permit No. REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated October 28, 1997 concerning the above taxpayer.

In your memorandum, you state that Tom Gonzales of the Norwalk District Office has requested a legal opinion on how the Board's collections efforts on the above account are affected by the premarital agreement between the taxpayer and her spouse.

In his memorandum, Tom Gonzales states that the taxpayer's attorney claims that the premarital agreement prevents the Board from attempting to obtain a Spousal Wage Garnishment (EWO) to garnish the wages of the taxpayer's husband. The seller's permit was issued to the taxpayer only.

On page 3 of the premarital agreement, it states:

“After the solemnization of the marriage of the parties, each party shall retain the ownership, control, use, earnings from, and enjoyment of his or her separate property, in the same manner and to the same extent as if the parties had not been married”

The agreement also provided on page 3:

“COMMUNITY PROPERTY

“While married the property interests of the parties hereunder shall nevertheless remain the same as they would have been had the parties remained single.”

On page 5 of the agreement, it states:

“As used herein, the term ‘Separate Property’ shall be deemed to include all right, title and interest which a party hereto has or may have in and to property of any kind and description, whether real, personal, or mixed, tangible or

intangible, actual or inchoate, wheresoever situate, and whether now owned or hereafter acquired.”

It is our opinion that when this agreement was executed, the parties intended that all their property, present and future, would be considered the separate property of the party who acquired it as if the parties had not married. We believe that the parties have no community property that will permit the Board to obtain a EWO to garnish the wages of the taxpayer’s husband.

In his memorandum, Tom Gonzales also states:

“Will the taxpayer’s separate property which was transferred to the Trust after receiving her Seller’s Permit and subsequent to her marriage pose any foreseeable problems in attempting to get a Spousal Wage Garnishment? If so, please identify them.

“Is it possible to pierce the Trust? If so, how do we go about it since we don’t have a copy to review?

“Are the dates the taxpayer married, effective date her business began and the date the separate property was transferred to the Trust have any bearing on piercing the Trust? If so, what exactly?”

We believe that the Board cannot obtain a Spousal Wage Garnishment in this action because the wages of the taxpayer’s husband are not community property. However, the taxpayer’s separate property can be used to satisfy her tax liability. Since most of the taxpayer’s liability arose in 1995, she may have made a fraudulent transfer of her separate property into the trust if the transfer was made after the liability arose. If real property was transferred into the trust, it may be possible to approve the recording of a nominee lien against the property transferred. It is our recommendation that the district investigate to determine what property was transferred into the trust and the date of the transfer. If possible, a copy of the trust agreement should be obtained.

TJC/cmm
Attachments

cc: Norwalk District Administrator (AA)