

170.0007.250**Memorandum**

To: Mr. R. A. Slater
Supervisor of Collections

Date: October 2, 1995

From: Thomas J. Cooke
Staff Counsel

Subject: REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated September 6, 1995, concerning the above taxpayer.

In your memorandum, you state that the Board made demand on REDACTED TEXT for the guaranties that they provided to the Board for the payment of any liability of REDACTED TEXT. The Board has received a reply to the demand from REDACTED TEXT, the attorney for REDACTED TEXT, in which REDACTED TEXT questioned the effectiveness of the written guaranties. The guaranties were accepted by the Board without a date or a location at which the guaranties were signed. You ask for an opinion as to the validity of the guaranties and if so, whether the district office was remiss in not executing and dating the guarantes.

The Board supplies a form (BT-140) to individuals or entities who "guarantee" a taxpayer's liability up to a specified amount which is to be inserted on the form. The guarantor guarantees the payment of the liability "as respects transactions occurring on and after the effective date of this guaranty."

Although controlled by statute, the "guarantee" is essentially a contract of indemnity whereby the guarantor contracts with the Board to pay the tax liability of another.

Civil Code section 2793 provides:

"Except as prescribed by the next section, a suretyship obligation must be in writing, and signed by the surety; but the writing need not express a consideration."

A contract between parties in California need not be dated or specify the location where the contract is signed in order to be valid. It is prudent that a contract be dated and specify the location where it is signed as an aid to refresh the recollection of the signing parties as to the place and time of execution. The contract is valid and enforceable without the inclusion of these items.

It is our recommendation, however, that any BT-140 form which is submitted to the Board without a date or without specifying the location where it was executed be returned to the signing party so that these items can be inserted by that party.

TJC/cmm