

**170.0036****Memorandum**

To: Mr. Rick Slater  
Supervisor of Collections - MIC:55

Date: May 30, 1995

From: Thomas Cooke  
Staff Counsel

Subject: REDACTED TEXT

Les Sorensen has requested that I respond to your memorandum to him dated May 24, 1995 concerning the Santa Rosa District Office's request for an opinion. The request concerns an auctioneer's refusal to honor the Board's levy served on it for the proceeds of a sale of the taxpayer's abandoned property.

The Board served a levy on REDACTED TEXT to execute on the proceeds of a sale of the taxpayer's abandoned personal property. The attorney for REDACTED TEXT responded to the levy by stating that the sale proceeds were \$14,935.65 and were deposited in REDACTED TEXT's trust account. By agreement with the taxpayer's landlord, REDACTED TEXT is entitled to \$6,045.35 of the proceeds to cover its sales commission and costs. It is unclear whether the taxpayer's landlord, REDACTED TEXT, is entitled to any of the proceeds of the sale.

The attorney for REDACTED TEXT states in his response to the levy (Memorandum of Garnishee) that 1) REDACTED TEXT is entitled to \$6,045.35 as its sales commissions and costs. Apparently, the Board concedes this; 2) all of the funds in the trust account are exempt from levy because they are held in a trust account and trust funds are not subject to enforcement of a levy pursuant to Financial Code section 17410 and 3) the State of California is not entitled to its levy under the equitable principles of laches.

Financial Code section 17410 provides:

“(a) Escrow or trust funds are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent, and in no instance shall such escrow or trust funds be considered or treated as an asset of the licensee or person performing the functions of an escrow agent.

“(b) Interest paid or payable on funds deposited in escrow by a licensee are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent.”

REDACTED TEXT is “the licensee or person acting as escrow agent”. The Board is not enforcing a money judgment arising out of any claim against REDACTED TEXT. The Board’s claim is against the taxpayer. Financial Code section 17410 has no relevance to the Board’s levy.

Civil Code section 1988 subdivision (c) provides:

“After deduction of the costs of storage, advertising, and sale, any balance of the sale which is not claimed by the former tenant or an owner other than such tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The former tenant or other owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county....”

It is our opinion that the Board’s lien attaches to the proceeds of the sale and REDACTED TEXT has a legal duty to honor the Board’s levy and turn over the proceeds of the sale to the Board. In addition, it is our opinion that the Board’s lien status makes it “an owner other than the tenant” and by serving the levy upon REDACTED TEXT is making its claim within the meaning of Civil Code section 1988 subdivision (c). If REDACTED TEXT does not honor the Board’s levy and then pays the proceeds into the county treasurer, the Board can file its claim with the county treasurer. However, the Board risks the possibility that another claimant will obtain the proceeds in the interim.

REDACTED TEXT’s contention that the principles of laches precludes it from honoring the Board’s levy has no merit. There are no equitable considerations involved in enforcement of levies. There are controlled exclusively by statute

TJC:plh

cc: Mr. Stephen Biggers  
Santa Rosa District Office - JH