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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION – MIC: 85
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Controller, Sacramento

December 26, 1997

REDACTED TEXT

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

Re: REDACTED TEXT

Dear REDACTED TEXT:

This office has received your letter dated December 23, 1997 in which you state that you represent REDACTED TEXT, a former partner and permitholder in the above business. Mr. REDACTED TEXT's bank account was levied on December 4, 1997 for \$2,082.22. You are requesting a refund of the funds obtained by the levy on the grounds that the State Board of Equalization was on actual notice that REDACTED TEXT no longer had an interest in REDACTED TEXT by the bankruptcy filing on April 21, 1997 of REDACTED TEXT], Mr. REDACTED TEXT's partner in the business. You state that Mr. REDACTED TEXT ceased to be a partner in the business on December 31, 1995 and was not on the ABC license since November 15, 1996. Therefore, you contend, Mr. REDACTED TEXT cannot be held responsible for taxes incurred in April, May and June of 1997 when tax returns were filed for those months without payment.

Sales and Use Tax Regulation 1699(f) provides, in part:

“Upon discontinuing or transferring a business, a permit holder shall promptly notify the board and deliver his or her permit to the board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

“(1) Oral or written statement to a board office or authorized representative, accompanied by delivery of the permit, or followed by deli very of the permit upon actual cessation of the business. The permit need not be delivered to the board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

“(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the board on notice of the transferor's cessation of business.

“Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the board.”

We do not believe that Mr. REDACTED TEXT’s Chapter 13 bankruptcy filing constituted actual notice that Mr. REDACTED TEXT no longer had an interest in the business. One partner in a business may file a Chapter 13 bankruptcy action while another partner has not filed bankruptcy. See 11 U.S.C. section 1301(a)(1).

The fact that Mr. REDACTED TEXT may have ceased to be a partner on December 31, 1995 or that his name has not been on the ABC license since November 15, 1996 is irrelevant if the Board has not received notice that he has withdrawn as a partner.

However, even if the withdrawing partner failed to give notice to the Board that he was withdrawing from the partnership, Revenue and Taxation Code section 6071.1 and Sales and Use Tax Regulation 1699(f) limits his tax liability “to the quarter in which the business is transferred, and the three subsequent quarters.” If you can furnish sufficient proof of your statement that Mr. REDACTED TEXT withdrew from the business on December 31, 1995 to the Board’s district office, it is our opinion that Mr. REDACTED TEXT is entitled to a refund of the levied funds.

Very truly yours,

Thomas J. Cooke
Tax Counsel

TJC/cmm

cc: Oakland District Administrator (w/encl.) - CH