

**170.0068****Memorandum**

To: Mr. Wes Hamiel  
Headquarters, Collection Section

Date: December 11, 1995

From: Thomas J. Cooke  
Staff Counsel

Subject: REDACTED TEXT  
Account Nos. REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated October 25, 1995 concerning the above taxpayers.

In your memorandum, you state that the Riverside District Office has requested a legal opinion on the ability of the Board to levy on rents received from property held in joint tenancy where one joint tenant has had her liability discharged in bankruptcy and the other joint tenant remains liable for the taxes due on the accounts.

Mr. and Mrs. REDACTED TEXT were joint permit holders on several Board accounts. Mrs. REDACTED TEXT filed bankruptcy and her personal liability to the Board has been discharged. The REDACTED TEXTs own several parcels of real property in joint tenancy. Two of these parcels are "rentals." We are asked if the Board can levy upon the rents of the rental property held in joint tenancy, and, if so, how does the levy affect the joint tenant whose liability has been discharged.

In *Rupp v. Kahn* (1966) 246 Cal.App.2d 188, the court stated:

"Upon its creation, each joint tenant is vested with title to an undivided one-half of the joint tenancy property, with power to convey that half interest and thereby terminate the joint tenancy. And a creditor may levy only on the undivided one-half interest of his debtor. It follows that, by taking title in joint tenancy, decedent effectively placed one-half of the property so acquired -namely the interest thereby immediately vesting in defendant wife - beyond the reach of his creditors during his lifetime . . . ."

Family Code section 750 provides that a husband and wife may hold property as joint tenants, tenants in common or as community property. The separate property of a spouse may be held in joint tenancy or in tenancy in common with the other spouse. But a community estate and a joint tenancy cannot exist at the same time in the same property between the spouses

(*Tomaier v. Tomaier* (1944) 23 Cal.2d 754). Therefore, property held in joint tenancy by spouses must be their separate property.

Family Code section 770 provides, in part:

- “(a) Separate property of a married person includes all of the following:
- (1) All property owned by the person before marriage.
  - (2) All property acquired by the person after marriage by gift, bequest, devise, or descent.
  - (3) The rents, issues, and profits of the property described in this section.”

It is our opinion that only one-half of the rents on joint tenancy property owned by the REDACTED TEXT is subject to levy. The Board’s Notice of Levy should instruct the renters of the joint tenancy property that only one-half of the rents should be forwarded to the Board in response to the levy.

TJC/cmm