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Memorandum

To: Mr. P. K. Taylor (RAS)

Date: May 31, 1985

From: Legal (RLD)

Subject: REDACTED TEXT

This is in reply to your March 29, 1985 memorandum regarding the validity of the REDACTED TEXT Trust.

You explained that Mr. REDACTED TEXT is indebted to the board for approximately \$17,500 use tax on his purchase of two vessels. The only asset which the compliance staff has located in which Mr. REDACTED TEXT has an interest is a trust of which Mr. REDACTED TEXT is the beneficiary, subject to a spendthrift provision. You asked whether the trust itself is valid and, if not, whether the board can look to the assets in the trust or merely the income of the trust for payment of Mr. REDACTED TEXT 's use tax liability.

A spendthrift trust is a trust which provides that the interest of the beneficiary can neither be transferred by the beneficiary nor reached by the beneficiary's creditors. Such trusts are created by the trustor for the purpose of providing a fund for the maintenance of another, and at the same time, securing it against his or her own improvidence or incapacity. (Estate of Delano 62 Cal.App.2d 808.)

Spendthrift trusts are generally valid, and after reviewing the REDACTED TEXT Trust, I do not see anything that would cause the trust document to be invalid. The trust was created by, Mr. REDACTED TEXT as trustor, whereby he placed real property in trust for the benefit of his son, Mr. REDACTED TEXT. If the trust document were invalid, we believe that the board would not benefit, because the property would merely go back to Mr. REDACTED TEXT. (Vooge v. Reinicke 45 Cal.App.2d 290.)

However, REDACTED TEXT filed a petition in the Los Angeles Superior Court, Case No. REDACTED TEXT, attempting to apply rents and profits of the trust in satisfaction of a judgment against Mr. REDACTED TEXXT. REDACTED TEXT apparently relied on facts it had learned of to assert that the spendthrift provision of the trust had been waived either by the trustor, the trustee or the beneficiary. REDACTED TEXT further asserted that the trust was not a valid spendthrift trust.

In opposition to REDACTED TEXT's petition in the litigation, Mr. REDACTED TEXT certified that he is totally dependent upon the income that he receives from the trust and that such income was less than \$12,000 for the calendar year 1983. (see paragraph 10, page 4.). However, the Occasional Sales Use Tax Unit's files contain a copy of Mr. REDACTED TEXT's State income tax return for the calendar year of 1983. On such return, Mr. REDACTED TEXT

reports \$ 4,700 gross rental income from property in Point Arena and deductions for sales tax of \$518 paid on the purchase of a mobile home and \$1,860 paid on the purchase of a vessel. Since Mr. REDACTED TEXT claimed an interest deduction of only \$240 on a loan, it appears possible that he traded property or paid cash for the boat and mobile home in 1983 and perhaps has another source of income besides the trust.

A creditor may reach the surplus of rents and profits of a spendthrift trust beyond the sum that is necessary for the education and support of the beneficiary (Section 859, Civil Code; Estate of Lawrence 267 Cal.App.2d 77.) The question of whether such surplus may be reached may be tried in statutory proceedings supplemental to execution such as the examination of a debtor.

We suggest that the staff gather whatever facts are available that would aid in an examination of Mr. REDACTED TEXT pursuant to Section 708.110, Code of Civil Procedure, and refer the case to the Attorney General's office for such examination.

If Mr. REDACTED TEXT still owns the rental property at Point Arena, we suggest that a Notice of Levy be served on the tenant for any rental payments which the tenant pays to Mr. REDACTED TEXT.

If you have further questions on this, feel free to contact me.

RLD:ct