

170.0250**Memorandum**

To: Ms. Sue Coty
Compliance Program Manager

Date: December 16, 1996

From: Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
CalNet 485-6496

Subject: Uniform Partnership Act of 1994

Your memorandum to Mary Armstrong dated November 5, 1996 concerning the Uniform Partnership Act of 1994 has been forwarded to me for response.

In your memorandum, you state that the Uniform Partnership Act of 1994 (revised Act) alters the extent to which a partner's assets may be used to satisfy a judgment against the partnership. Historically, because the partners of a partnership were jointly and severally liable for debts of the partnership, the Board was able to lien and/or levy on assets of the partners to satisfy the debts of the partnership. You ask if changes made by the revised Act will prevent the Board from doing so in the future?

The revised Act provides that new partnerships formed after January 1, 1997 will be governed by the revised Act. Partnerships formed prior to January 1, 1997 will be governed by the existing Uniform Partnership Act (existing Act) until January 1, 1999.

Corporations Code section 16307(c) (a section of the revised Act) provides that:

“[a] judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.”

Corporations Code section 16307(d) further provides that:

“[a] judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless any of the following apply:

“(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

“(2) The partnership is a debtor in bankruptcy.

“(3) The partner has agreed that the creditor need not exhaust partnership assets.

“(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that the partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court’s equitable powers....”

Under section 16307(d), although a judgment creditor of a partnership may also have a judgment against a partner, based on a claim against the partnership, the creditor may not levy on the partner’s assets until the creditor complies with any of the criteria of section 16307(d).

The Board proposed that a new section 6831 be added to the Revenue and Taxation Code to law with the passage of the revised Act. The section provides:

“The Board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for a seller’s permit, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.”

Prior to the enactment of the revised Act, the Board was not required to issue a determination against an individual partner if a determination had been validly issued to the partnership. There was no restriction on the Board’s ability to execute on, or to impose a lien on, a partner’s assets to satisfy a determination issued to the partnership. Corporations Code section 15015 (a section of the existing Act) provides:

“(a) Except as provided in subdivision (b) [relating to registered limited liability partnerships], all partners are liable as follows:

“(1) Jointly and severally for everything chargeable to the partnership under Section 15013 [Liability of partnership for wrongs of partner] and 15013 [Liability of partnership for partner’s misapplication of property].

“(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract”

As stated earlier, prior to the enactment of the revised Act, the Board was not required to issue a determination against an individual partner if a determination had been validly issued to the partnership. Under the Revenue and Taxation Code, a determination which has become final

has many of the same characteristics as that of a final judgment against the taxpayer. Pursuant to Revenue and Taxation Code section 6703, the Board's Notice of Levy has the same effect as a levy pursuant to a writ of execution which was issued on a final judgment. The enactment of Revenue and Taxation Code section 6831 was necessary to enable the Board to effectively collect liabilities under the revised Act.

Unless a partnership formed after January 1, 1997 and applying for a seller's permit after January 1, 1997 furnishes to the Board the written partnership agreement described in Revenue and Taxation Code section 6831, there should be no change in the Board's ability to lien or levy on a partners' assets for a partnership liability. If a partnership formed after January 1, 1997 and applying for a seller's permit after January 1, 1997 furnishes to the Board the written partnership agreement described in Revenue and Taxation code section 6831, the Board will be required to issue a determination against individual partners before the partner's assets are subject to lien or levy. After a determination has been issued to the individual partner and has become "due and payable," the Board may file or record liens against the partner's assets. After a determination has been issued to the individual partner and has become "due and payable," the Board may levy on the partner's assets if it can show that any of the conditions described in Corporations Code section 16307(d)(1) through (4) exist.

TJC/cmm

cc: Mr. Gary J. Jugum (MIC:82)
Mr. David H. Levine (MIC:82)
Mr. Ronald L. Dick (MIC:82)
Mr. John L. Waid (MIC:82)
Mr. Robert Sullivan (MIC:40)