

170.0295**Memorandum**

To: Mr. Vic Anderson, Supervisor
Petitions Section – MIC: 38

Date: January 10, 1996

From: Thomas J. Cooke
Staff Counsel

Subject: REDACTED TEXT
REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated December 29, 1995 concerning the above taxpayers.

In your memorandum, you state that, on or about June 1, 1992, the assets and liabilities of REDACTED TEXT, an Arizona corporation (REDACTED TEXT) were transferred by statutory merger to REDACTED TEXT, a Nevada corporation (REDACTED TEXT). REDACTED TEXT failed to notify the Board of the change in ownership, and REDACTED TEXT operated using the REDACTED TEXT permit number of REDACTED TEXT.

On August 17, 1994, REDACTED TEXT filed Chapter 11 bankruptcy. A jeopardy determination was issued to REDACTED TEXT on December 22, 1994, and a non-jeopardy determination was issued to REDACTED TEXT on December 23, 1994. Both determinations were for pre-petition tax liabilities.

Pursuant to Mr. E. L. Sorensen's memorandum of November 28, 1994, the determination issued to REDACTED TEXT was canceled as it was issued in violation of the bankruptcy automatic stay. You state that you are unsure whether the jeopardy determination issued to REDACTED TEXT also violated the automatic stay.

The representative for REDACTED TEXT filed a request for an administrative hearing on the jeopardy determination issued to REDACTED TEXT, along with a protective claim for refund for REDACTED TEXT's \$10,000 cash security deposit that was applied to the liability. You request an opinion as to the action to be taken with respect to the jeopardy determination, the cash security deposit, and the request for an administrative hearing.

In a statutory merger, the surviving corporation succeeds to all of the assets and outstanding liabilities of the defunct corporation. At the time that REDACTED TEXT filed for bankruptcy protection, all of the assets and liabilities of the former corporation referred to as REDACTED TEXT were then the assets and liabilities of REDACTED TEXT. The bankruptcy automatic stay therefore encompassed the business operations and liabilities of the former corporation known as REDACTED TEXT. Since the surviving corporation filed bankruptcy

prior to October 22, 1994, the Board violated the automatic stay when it issued the jeopardy determination against REDACTED TEXT on December 22, 1994, and when it issued the determination against REDACTED TEXT on December 23, 1994.

The Board may conduct an audit of a taxpayer's business during the taxpayer's bankruptcy proceeding without violation of the automatic stay (even for pre-October 22, 1994 bankruptcies). The Board's proofs of claim filed in REDACTED TEXT's bankruptcy are valid even if determinations were issued which violated the automatic stay.

It is our recommendation that the jeopardy determination be canceled, as it was issued in violation of the bankruptcy automatic stay, that the Board continue to collect the audit liabilities through its proofs of claims filed in the bankruptcy action, and that the Board suspend any other administrative action on the taxpayer's accounts while the automatic stay is in effect.

TJC:sr