

170.0305**Memorandum**

To: Mr. Alan Giorgi
Sacramento District Compliance

Date: June 4, 1993

From: Thomas J. Cooke
Tax Counsel

Subject: Codebtor Stay
REDACTED TEXT

The Legal Division has received your memorandum dated May 10, 1993 in which you discussed 11 U.S.C. § 1301(a) appears to exempt the stay from any

“...individual [who] becomes liable on or secured such debt in the ordinary course of such individual’s business. . .”

11 U.S.C. § 1301 imposes a stay on the collection of a “consumer debt” from a codebtor of a Chapter 13 debtor. Business tax liability is not a “consumer debt.” However, the ability of the Board to collect the partnership liability from REDACTED TEXT does not mean that the Board may collect that liability from property in the bankruptcy estate of REDACTED TEXT. The automatic stay pertaining to REDACTED TEXT prohibits the Board from taking

“any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” (11 U.S.C. § 362(a)(3).)

The property of REDACTED TEXT estate contains all of the assets of REDACTED TEXT even if REDACTED TEXT has only an 80 percent interest in the partnership. See 11 U.S.C. § 541(a)(1).

If REDACTED TEXT paid a salary by REDACTED TEXT (in addition to any profits due to her), her salary may presently be garnished for the partnership tax liability. However, the “automatic stay” in effect for REDACTED TEXT bankruptcy action prevents any creditor (including the Board) from taking any collection action (including the installation of a keeper) against the business for pre-petition liabilities.

If the Board can discover any assets of REDACTED TEXT which are not partnership assets forming part of REDACTED TEXT bankruptcy estate, those assets are not subject to a “stay” and may be levied upon.

TJC:cl

cc: Mr. Rick Slater
Mr. Gordon P. Adelman