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STATE OF CALIFORNIA

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June 4, 1993

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*Executive Director*

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

This office has received your letter dated April 28, 1993 in which you responded to our earlier letter concerning the above taxpayer.

In your recent letter, you state that REDACTED TEXT has a general lien on all depositor property in its possession pursuant to Civil Code section 3054(a). You further state that with respect to money, however, the relationship between a bank and a depositor is a debtor-creditor relationship and the money deposited belongs to the bank. You state that if REDACTED TEXT owed money to the debtor, that obligation was subject to an equitable set off. You conclude that since the money in the deposit account was the property of REDACTED TEXT and not the property of the taxpayer-depositor, the bank is not required to pay its money to satisfy the customer's tax liability.

In Gonsalves v. Bank of America (1940) 16 Cal.2d 169, 105 P.2d 118, the court held that the "banker's lien" under Civil Code section 3054 was not a lien since funds on deposit are owned by the bank and the bank cannot have a lien on its own property. The court stated that the code section provided an equitable right of setoff to the bank on a depositor's matured indebtedness.

California Revenue and Taxation Code section 6757 provides that if any person fails to pay any sales or use tax, the amount due shall thereupon be a perfected and enforceable state tax lien. Such lien is subject to Government Code section 7150 et. seq.

Government Code section 7170(a) provides that a state tax lien attaches to all property and rights to property belonging to the taxpayer. Government Code section 7170(c) provides that a state tax lien is not valid as to

"(4) any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

"(G) acquires a security interest in a deposit account. . ."

Since Government Code section 7170(a) provides that the state tax lien attaches to all rights to property and then carves out an exception for deposit accounts subject to security interest, a state tax lien must have priority over a bank's later assertion of a right of equitable setoff in an account not subject to a security interest. See Bradbury v. Kaiser (1992) 3 Cal.App.4th 1257, 5 Cal.Rptr.2d 325.

The adoption of the Uniform Commercial Code in California and other states has modified the "banker's lien" provided by Civil Code section 3054 so that only deposits in which the bank has a security interest will be subject to a right of set off. See National Acceptance Company of America v. Virginia Capital Bank (1980) 491 F.Supp. 1269. We believe that Commercial Code sections 9301 and 9302 and Code of Civil Procedure section 701.040 deprive REDACTED TEXT of a right to a "banker's lien" on the funds in dispute.

If the REDACTED TEXT can show that the taxpayer had signed an agreement in which a security interest was granted to the bank in funds in the taxpayer's accounts levied upon and that security agreement was executed prior to the levy, the bank has a right to equitable set off of the amount due it on the matured loan in default. If the bank has no such security agreement, it has no right to set off any funds levied upon.

Very truly yours,

Thomas J. Cooke  
Tax Counsel

TJC:cl