

170.1212

Memorandum

To: Mr. Rick A. Slater
Supervisor of Collections

Date: December 11, 1995

From: Thomas J. Cooke
Staff Counsel

Subject: REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated November 7, 1995, concerning the above taxpayer.

In your memorandum, you state that the REDACTED TEXT District Office has requested that a dual determination be issued against the former corporate officers of REDACTED TEXT for operation of the business after suspension by the Franchise Tax Board. The Secretary of State records show that the corporation was suspended on June 1, 1992. The corporation filed Chapter 11 bankruptcy on December 23, 1992. On December 15, 1993, the corporation's plan of reorganization was confirmed.

In the case of *In re Golden Plan of California* (1984) 37 Bankruptcy Reporter 167, the court held that the suspension of a corporation by the Franchise Tax Board during the bankruptcy "automatic stay" was a violation of the "stay" and void.

In the instant matter, REDACTED TEXT was suspended by the Franchise Tax Board prior to its bankruptcy filing. You ask if the dual determination can be issued against the corporate officers for the post-petition liabilities and post-confirmation debt of the corporation.

When REDACTED TEXT filed bankruptcy, the corporation had been suspended by the Franchise Tax Board. It is not a violation of the "automatic stay" to continue the suspension during the bankruptcy proceeding. Since there was no violation of the "automatic stay," there is no act by FTB that was "void." Therefore, if the corporation continues to do business both during the bankruptcy proceeding and while its corporate powers are suspended by the FTB, dual determinations may be issued against the corporate officers for post-petition liabilities and for post-confirmation debt. There is no exception that allows a corporate debtor-in-possession to transact business in this state while its corporate powers are suspended.

TJC/cmm