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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

August 19, 1996

REDACTED TEXT

Re: People v. REDACTED TEXT
REDACTED TEXT

Dear REDACTED TEXT:

I am a tax counsel employed by the State Board of Equalization. I have reviewed the Board's file on REDACTED TEXT. REDACTED TEXT was prosecuted in REDACTED TEXT Municipal Court for violation of Revenue and Taxation Code section 7153 in that he, as President of REDACTED TEXT, engaged in business without obtaining the required seller's permit from the Board and failed to file the required sales tax returns. After conviction, REDACTED TEXT was required, as a condition of probation, to pay restitution to the Board in the form of taxes due by REDACTED TEXT.

On March 17, 1994, REDACTED TEXT filed Chapter 7 bankruptcy. 11 U.S.C. § 727 provides that:

“[t]he court shall grant the debtor [in a Chapter 7 bankruptcy] a discharge, unless --

- 1) the debtor is not an individual;”

The Legislative History of 11 U.S.C. § 727 for modifications adopted in 1977 and 1978 states:

“Subdivision (a) requires the court to grant a debtor a discharge unless one of eight conditions is met. The first condition is that the debtor is not an individual. This is a change from present law, under which corporations and partnerships may be discharged in liquidation cases, though they rarely are. The change in policy will avoid trafficking in corporate shells and in bankrupt partnerships. . . .”

11 U. S. C. § 727(a) prohibits Arc-Crete Precast Inc. from obtaining a bankruptcy discharge of its tax liability to the Board in a Chapter 7 proceeding. The court's order requiring Mr. Rudolf to pay restitution to the Board in the form of the taxes due from the corporation was proper as the corporate tax liability was not discharged.

Very truly yours,

Thomas J. Cooke
Tax Counsel

TJC:sr