

Memorandum

560.0235

To: Collections Section - (B.R.)

Date: August 17, 1993

From: Thomas Cooke, Tax Counsel
Legal Division - MIC:82

Subject: [F] Bank
Account No. SY -- XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated July 29, 1993 concerning the liability of FDIC as receiver for the above taxpayer.

In your memorandum, you state that on August 10, 1990, the Federal Deposit Insurance Corporation (FDIC) was appointed as Receiver for the taxpayer.

[F] Bank's current liability totals \$9,060.76. This liability, consisting solely of interest and penalties, is based on late returns filed by FDIC after the due date. The returns cover the time period of October 1, 1990 through November 30, 1992, periods which are after FDIC was appointed as receiver.

The Culver City District believes that, pursuant to Section 15(b)(1) of the Federal Deposit Insurance Act and Section 219 of the Federal Institution Reform Recovery and Enforcement Act, when the FDIC is acting as receiver, it is exempt from any state, county, municipality, or local taxing authority taxes.

You ask:

- (1) Is the FDIC exempt from tax?
- (2) Should the tax money paid by FDIC be refunded?
- (3) If not, what should we do about the existing penalty and interest liability?

12 U.S.C. Section 1825(b) provides:

“When acting as a receiver, the following provisions shall apply with respect to the [Federal Deposit Insurance] Corporation:

“(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any state, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to state, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed....

“(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.”

It is our opinion that if the present liability consists solely of interest and penalties assessed because FDIC failed to file returns promptly during the period that it acted as receiver 12 U.S.C. Section 1825(b)(3) prevents an assessment against the FDIC. Since the taxpayer was not operating the bank during the assessed period, the taxpayer cannot be held responsible for the failure of the receiver to promptly file the tax returns. It is our recommendation that the assessment be deleted.

On August 30, 1990, the seller's permit for [F] Bank was closed out. The FDIC has continued to file returns for [F] Bank under the closed-out permit number. In a memo in the file, it is stated that C--- G--- of FDIC advised the Board that all reporting since August 10, 1990 represents leases of automobiles until those vehicles can be liquidated. Therefore, it appears that the amounts reported in the returns filed by FDIC represent tax on lease payments for leases signed before the receiver was installed. 12 U.S.C. Section 1821(d)(2)(H) provides:

“The [Federal Deposit Insurance] Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter.”

Apparently, the FDIC is reporting and paying taxes that it believes is owed by [F] Bank.

It is our recommendation that the Board accept tax payments made by FDIC on [F] Bank's behalf, that any interest and penalty arising from late returns filed or late payments made by FDIC be deleted and that no additional interest or penalty be assessed while FDIC remains as receiver.

TJC:ph