

Memorandum

170.0014

To : Special Procedures Section (WWH)

Date: November 15, 1996

From : Thomas J. Cooke
Tax Counsel

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Subject: Request For Nominee Liens
E--- & A--- G---
Permit No. SR - - XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated November 4, 1996 concerning the Riverside District Office's request for approval of two nominee liens.

A nominee lien is an instrument that is recorded against certain property to allege that the property is being held by another, the "nominee," for the benefit and usage of the debtor taxpayer. The filing of the nominee lien is proper where title is held by a nominee third party as a result of a fraudulent conveyance by a delinquent tax debtor. Whether a conveyance is fraudulent involves a review of the following elements and factors: (1) the intent of the parties; (2) the financial conditions of the transfer; (3) the consideration or lack of considerations for transfer; and (4) the relationship of the parties. (Operations Memo No. 878, revised June 22, 1987.)

Operations Memo No. 878 cited former Civil Code sections 3439.04 and 3439.07 of the Uniform Fraudulent Conveyance Act as to what circumstances to look for in determining whether a fraudulent conveyance has been made. These code sections were subsequently amended by the revamped Uniform Fraudulent Transfer Act, and consolidated into Civil Code section 3439.04. (Stats. 1986, Ch. 383 §2.) Civil Code section 3439.04, as amended, provides that:

“A transfer made or obligation incurred by the debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

“(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

“(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, the debtor:

“(1) Was engaged or was about to engage in business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

“(2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.”

The taxpayers owe the Board \$47,032.33 of which \$38,659.43 consists of a determined liability for the period of 10/1/90 to 12/31/93 and the remainder for non-remittance returns filed in 1992 and 1993. The audit for the determined liability indicates that the audit findings were discussed with the taxpayers on May 20, 1994, that the taxpayers had filed no return for the 4th Quarter of 1993 and that the “auditor allowed taxpayer several weeks to obtain XYZ letters on questioned resales.”

On May 31, 1994, the taxpayers deeded real property located at XXXXX --- Street, --- ---, California to their son, G--- G---, by quitclaim deed. The deed states that no consideration was paid for the transfer of the property. The quitclaim deed was recorded on June 9, 1994.

On April 25, 1994, the taxpayers deeded real property located at XXXXX L---r C---, ---, California to their son, G--- G---, by quitclaim deed. The deed states that no consideration was paid for the transfer of the property. The quitclaim deed was recorded on April 28, 1994.

It is our opinion that the transfers of these two properties by the taxpayers to their son were made with actual intent to hinder, delay, or defraud the Board in the collection of the outstanding liability. Nominee liens should be recorded against these properties.

TJC/cmm

cc: Riverside District Administrator (EH)