



STATE BOARD OF EQUALIZATION

October 9, 1964

F---, G---, C--- & K---
Attorney at Law
P.O. Box XXX
---, Kansas XXXXX

XX-XXXXXX
-- - X-XXXXX
D--- Corporation

Attention: Mr. G--- H. W---

Gentlemen:

Yours of September 22, 1964, addressed to our Mr. W. L. Sandberg, has been referred to the undersigned for reply.

Review of our files on this case discloses that considerable authority has been cited to your firm in support of the board's position that it may collect interest and penalties after a proceedings under Chapter XI of the Bankruptcy Act is closed. We first call your attention to § 371 of the Bankruptcy Act which provides as follows:

“The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, but excluding such debts as, under section 17 of this Act, are not dischargeable.”

We have previously informed you of the provisions of § 17 of the Bankruptcy Act which provides that a tax debt is not affected by a discharge in bankruptcy. We find that the cases of Salsbury Motors, Inc. v. United States, et al.; California State Board of Equalization v. Coast Radio Products; and Paul F. Bruning v. United States of America, were cited to you in ours of August 21, 1964.

The board is precluded from claiming penalties in claims filed in both ordinary bankruptcies and Chapter XI proceedings because of the prohibitions contained in § 57(j) of the Bankruptcy Act. Although a § 57(j) specifically applied to ordinary bankruptcy proceedings, we must point out that, under § 302 of the Bankruptcy Act relating to Chapter XI proceedings, it is stated that the provisions of the first seven chapters of the Bankruptcy Act apply insofar as Chapter XI proceedings are concerned where such provisions are not inconsistent.

We do note that the board has made demand on the surety that furnished the bond under this account. We intend to collect from the surety if payment is not forthcoming from D--- Corporation. We, accordingly, request that remittance be made so that this matter may be brought to a conclusion.

Very truly yours,

Lloyd Palm
Associate Tax Counsel

LP:o'b

cc: Out-of-State - Compliance