

Memorandum

410.0194

To: San Bernardino – District Administrator
(John Miller)

Date: July 23, 1979

From: Staff Counsel (SMW) - Headquarters

Subject: **Regulation 1699, notice**

You have asked whether actual notice is required pursuant to Regulation 1699 (e) before a partner can be relieved of liability on an account held by his partnership. When we spoke on the phone yesterday I was sure I had previously written something on this topic; however, as I was unable to locate the correspondence I will summarize my conclusions again.

Regulation 1699 (e) provides in part that:

“Upon discontinuing or transferring a business, a permit holder shall promptly notify the board and deliver his permit to the board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

“ (1) Oral or written statement to a board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

“ (2) Receipt of the transferee or business successor’s application for a seller’s permit may serve to put the board on notice of the transferor’s cessation of business.

It further provides that “Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the board. This language indicates that actual notice must be given to the board.

This conclusion is supported by case law. In *Credit Bureaus of Merced County v. Shipman*, 167 C.A.2d 673 (1959), a partnership was dissolved by written agreement. A notice of dissolution was published in a newspaper of general circulation. No actual

notice of dissolution was given to businesses which had direct dealings with the partnership. One of the partners was, by agreement, to continue the business as a sole proprietor and pay all the bills. When the sole proprietor failed to pay the bills the court held that:

“... as to firms having prior credit dealings, with the partnership, actual notice of dissolution is necessary. While publication may be evidence from which actual knowledge could be inferred, publication alone would not compel a finding of actual knowledge. A retiring partner is not justified in placing sole reliance upon the publication of notice of dissolution, but should assure himself that existing creditors who have extended credit to the partnership receive actual notice of such dissolution.” (167 C.A.2d at 678.)

As the State of California is, in effect, a creditor, it should receive actual notice of a partner's leaving the partnership before that retiring partner is relieved of his personal liability for the debts of the partnership. (See also, Johnson v. Totten, 3 C. 343 (1853); Williams v. Bowers, 15 C. 3221 (1860).

Regulation 1699 (e) implements this case law and puts the taxpayer on notice that in order to avoid predecessor liability, actual notice must be given to the Board.

If you wish to discuss this further please do not hesitate to phone again.

SMW/at

cc: Collections
Ms. Margaret H. Howard