

M e m o r a n d u m**465.0012**

To: Mr. J. W. Kendrick
Petition Unit

October 2, 1989

From: David H. Levine
Tax Counsel

(916) 445-5550

Subject: Interested Party Petitions

This is in response to your memorandum dated September 8, 1989 regarding who constitutes a "person directly interested" within the meaning of Section 6561.

D--- T--- sold a business to J--- F---. When Ms. F--- defaulted on the purchase price, Mr. T--- filed suit and obtained a court order for appointment of a receiver. The receiver sold the business, and except for the liquor license, the proceeds of the sale have been distributed to creditors. A determination was issued against Ms. F---, and the collection staff has placed a hold on the liquor license to prevent its transfer since it is the only remaining asset of the business available to satisfy the determination.

Mr. T--- has filed a petition for redetermination of the determination issued to Ms. F---. He contends that he qualifies as an interested party since he is the "directly benefitted creditor." In other words, as we understand the facts, Mr. T--- will receive the proceeds from the sale of the liquor license, and the less of the proceeds that go to pay the determination, the more of the proceeds from that sale that Mr. T--- will receive.

Section 6561 provides that any person against whom a determination is made or any person directly interested may petition for redetermination. We believe that under the facts described above, Mr. T--- is a person directly interested in the determination issued against Ms. F---. He has filed suit, and the court has authorized the appointment of a receiver on behalf of Mr. T--- and other creditors. He has shown that the amounts remaining from the liquor license sale proceeds after payment of the determination will be available to satisfy the liability the taxpayer's (Ms. F---) alleged obligations to him under the supervision of the court in the action filed by Mr. T---. Furthermore, those alleged obligations arose from the same business from which the tax liabilities arose.

You have also asked what types of information may be disclosed to Mr. T--- if he is considered to be an interested party. This is answered in subdivision (e) of Section 7056. That provision provides that “[p]redecessors (such as Mr. T---), successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.” (Emphasis added.)

You note that you are getting more and more petitions filed by persons claiming to be interested parties and you have requested any additional general guidelines we can provide. We believe that it is necessary to interpret this provision very carefully and that to do so it would be best to examine this issue initially on a case-by-case basis. If you have several cases which you consider to be particularly troublesome, fee free to send them to us for our review. However, we note that a person permitted to file a petition as an interested party is not necessarily entitled to any amounts ultimately determined to have been overpaid. For example, if a person is permitted to file a petition for redetermination as an interested party of a paid-up petition, and that petition is redetermined to zero, the party filing the petition would normally not be issued the amounts overpaid. To do so would be to determine that the person filing the petition had the right to the overpayment rather than just a direct interest, the only conclusion made when the person was permitted to file the petition. For example, in this particular case, if the petition were paid up and ultimately redetermined to zero, we would not issue a refund to Mr. T---. Rather, he would have succeeded in preserving those assets and could ask the court for an order for us to turn the assets over to the receiver, which we would then do.

If you have further questions, feel free to write again.

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cc: Mr. Donald J. Hennessy
Mr. E. L. Sorensen, Jr.