State of California

Board of Equalization
Legal Division (MIC:82)

170.0007.110

Memorandum

To: Evangeline Shkidt
San Francisco District Office

Date: July 31, 1995

From: Thomas J. Cooke
Staff Counsel

Subject: REDACTED TEXT

Your memorandum to Headquarters Collection dated June 22, 1995, concerning the above taxpayer has been forwarded to this office for response.

In your memorandum, you ask if the response of the taxpayer's employer, REDACTED TEXT, is acceptable. The Board had served an Earnings Withholding Order on REDACTED TEXT as a means to satisfy the taxpayer's liability. In its response to the Earnings Withholding Order, REDACTED TEXT stated that the taxpayer was presently employed as an able seaman aboard one of the company's ships. Citing 46 U.S.C. §§11108 and 11109, REDACTED TEXT stated that, under federal law, it was unable to withhold any wages due the taxpayer.

46 U.S.C. §11108 provides:

> "Wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a state or a political subdivision of a state. However, this section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same state if the withholding is under a voluntary agreement between the seaman and the employer of the seaman."

46 U.S.C. §11109 provides, in part:

> "(a) Wages due or accruing to a master or seaman are not subject to attachment or assessment from any court, except for an order of a court about the payment by a master or seaman of any part of the master's or seaman's wages for the support and maintenance of the spouse or minor children of the master or seaman, or both. A payment of wages to a master or seaman is valid, notwithstanding any prior sale or assignment of wages or any attachment, encumbrance, or arrestment of the wages…."

In Sea-Land Service, Inc. v. United States, 622 F.Supp. 769 (D.C.N.J. 1985), the court stated:

> "Thus, Congress adopted the view that withholding wages for state taxes was a type of attachment which encroached on the traditional protection afforded seaman's wages under federal laws. [Currently, a separate provision of the shipping laws, Section 11108 of Title 46, explicitly prevents states from withholding taxes from seaman's wages.] But, it chose not to prohibit withholding of federal taxes from seamen's wages.
>
> "We believe this distinction is significant for the federal tax levies at issue here. An IRS levy, like the withholding of taxes, is a type of attachment which at first blush appears to conflict with the prohibitions of Section 11109. The legislative history of this section, however, provides reason to think that Congress did not mean those prohibitions to extend to federal tax collections. (622 F.Supp. at 773.)"

Based on the statutory language and the absence of any discovered cases providing otherwise, it is our opinion that the REDACTED TEXT was required under federal law to refuse to honor the Board's Earnings Withholding Order.

TJC/cmm

cc: Mr. Rick A. Slater (MIC:55)
Mr. Wes Hamiel (MIC:55)