

M e m o r a n d u m

170.0007.140

To : Mr. Steve Adams
Supervising Tax Auditor
Petitions Section

Date: August 4, 1997

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
CalNet 485-6496

Subject: H--- S--- F--- S---, Inc.
Permit No. SR -- XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated July 30, 1997 concerning the above taxpayer.

In your memorandum, you state that a Notice of Determination was issued to the taxpayer on August 28, 1991 for the period July 1, 1986 to December 31, 1989. A timely petition for redetermination was filed on September 23, 1991. The liability (for rental receipts and sale of equipment) was \$70,476.35 tax, \$28,851.34 interest and a ten percent negligence penalty of \$7,047.65.

On November 30, 1994, the taxpayer filed Chapter 11 bankruptcy. You ask that the Legal Section review the bankruptcy issues and provide guidance on how the Board should proceed with the taxpayer's petition.

Our review of the taxpayer's file indicates that the Board filed a proof of claim for \$125,286.29 in the taxpayer's bankruptcy action. The taxpayer objected to the Board's claim. After hearing on the taxpayer's objection, the bankruptcy court held that the taxpayer's liability should be measured by the actual sales price of property sold to it, not by its fair rental value. Based on the court's ruling, the Board filed an amended proof of claim in the taxpayer's bankruptcy action for \$50,997.19.

On November 7, 1996, the bankruptcy court confirmed the taxpayer's plan for reorganization. Paragraph 21.1 of the plan provided:

"The rights afforded in the Plan and treatment of all Creditors therein shall be in exchange for and in complete satisfaction, and discharge and release of Claims or Equity Interest of any nature whatsoever, including any interest accrued thereon, from and after the Petition Date against the Debtor and the Debtor-in-Possession or any of their assets or properties."

The plan provided that allowed priority tax claims shall be paid in 60 equal monthly installments with interest at eight percent. The taxpayer has been making monthly payments to the Board of \$1,034.04 under the plan since December of 1996.

It is our opinion that the taxpayer's plan of reorganization incorporating the bankruptcy court's decision on the taxpayer's tax dispute has established the obligation owed by the taxpayer to the Board. It is our recommendation that the Board take no further action on the taxpayer's petition.

TJC/cmm
Attachments

cc: San Jose District Administrator (GH)