

M e m o r a n d u m**170.0008**

To: Mr. Robert Colivas
Sacramento District Office, Compliance - KH

Date: October 20, 1993

From: Thomas Cooke, Staff Counsel
Legal Division, MIC:82

Subject: **J--- E. T---, TRUSTEE IN BANKRUPTCY
ACCOUNT NO. SR -- XX-XXXXXX**

The Legal Division has received your memorandum dated October 12, 1993, in which you state that the above trustee is indebted to the Board for taxes due for the first and second quarters of 1993 and for the July 1993 prepayment. You state that it is your understanding that trustees are not personally liable for the taxes due while they are operating a business. You ask if the Board could send a levy to the bank account for the estate involved which is held by the trustee or revoke the seller's permit. You also ask if the same principles apply to receivers or other court-appointed persons.

A review of the file indicates that on July 24, 1992, J--- T--- applied for a Seller's Permit as a trustee in bankruptcy. Mr. T--- provided the Board with a bankruptcy court order authorizing him to take possession of a convenience store. Mr. T--- has been making payments to the Board on the tax liability accruing since he began operating the business, but his payments have not been timely and there is an outstanding balance.

One of the duties of a trustee who is appointed to assume control of a debtor's business in a bankruptcy action is to pay collected amounts to appropriate governmental units at the time and in the manner required by the local tax law. 11 U.S.C. § 346 (f). If a trustee fails to timely file tax returns or timely remit tax for periods that he operates the debtor's business, the Board should file an administrative claim in the debtor's bankruptcy action for the full post-petition liability including penalties for late-filed returns or late remittances. The debtor's confirmed plan may provide for payment of this post-petition liability.

Under Chapter 11 bankruptcy law, the confirmation of a plan operates as a discharge of any dischargeable pre-confirmation debt. Any allowable post-petition tax liability should be "dealt with" in the confirmed plan.

11 U.S.C. § 362 (c)(2) provides that the "automatic stay" in a bankruptcy action continues until the earliest of -

"(A) the time the case is closed;

"(B) the time the case is dismissed; or

"(C) if the case is a case under Chapter 7 of this title concerning an individual or a case under Chapter 9, 11, 12 or 13 of this title, the time a discharge is granted or denied."

As indicated earlier, in a Chapter 11 bankruptcy case, the confirmation of a plan operates as a discharge (11 U.S.C. § 1141(D)(1).)

The Board should consider referring actions in which a trustee is not fulfilling his duties for a motion to "convert or dismiss."

Until the Chapter 11 plan has been confirmed by the court, the "automatic stay" is in effect and the Board should take no administrative action to satisfy post-petition tax liability including revoking the seller's permit issued to the trustee.

These principles do not apply to other receivers or court-appointed trustees. In many cases, there are particular statutes which govern the liability of these receivers or trustees. We cannot respond to the liability of these receivers or trustees unless we are presented with a particular factual situation.

This particular bankruptcy has been very difficult on the trustees because of in-fighting by the debtor and his family. It is our belief that Mr. T--- is attempting to pay the tax liability but the problems caused by the debtor have delayed the payments. It is our recommendation that your office coordinate your activities on this account with Dewey Roberts of the Collection Section. He is also attempting to obtain payment of the outstanding liability.

TJC:plh

cc: Mr. Gordon Adelman - MIC:82
Mr. Rick Slater - MIC:55