



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 445-6496
FAX: (916) 323-3387

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First District, Hayward

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E. L. Sorensen, Jr.
Executive Director

July 2, 1996

J. S--- S---, Esq.
The --- Building
XXX ---, Suite XXX
---, California XXXXX

Re: T--- R--- L---
Account No. SN -- XX-XXXXXX

Dear Mr. S---:

This office has received your letter dated June 24, 1996.

In your letter, you state that you and your wife own real property located at XXXX --- Avenue in --- ---. You also state that T--- L--- has no ownership interest whatsoever in this property. You state that the Board has slandered your title to this property by wrongfully recording a lien based on innuendo and speculation and you demand that a Release of Tax Lien be recorded forthwith.

T--- R--- L--- operated a business known as E--- T--- Mini Market. Mr. L--- became indebted for sales taxes arising from the operation of this business. On September 12, 1995, Mr. L---, with knowledge of his tax liability to the Board, conveyed an undivided one-half interest in the real property located at XXXX --- Avenue in --- --- to you and your wife. Prior to this conveyance, Mr. L--- held a 100 percent interest in this property. The grant deed conveying this interest indicates that no documentary transfer tax was paid on this transfer. The grant deed was recorded in Orange County Recorder's Office on September XX, 199X.

On March XX, 199X, Mr. L--- conveyed all of this interest in the real property located at XXXX --- Avenue to you and your wife by separate grant deed. The grant deed indicated that "no consideration" was paid for the transfer and no documentary transfer tax was paid.

Civil Code section 3439.04 provides:

“A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

“(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

“(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

“(1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

“(2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.”

Civil Code section 3439.05 provides:

“A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.”

When Mr. T--- failed to pay the sales taxes due by him, a statutory lien arose for those taxes pursuant to Revenue and Taxation Code section 6757 and Government Code section 71710(a). The lien attached to “all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state.”

The statutory lien attached to the real property located at XXXX --- Avenue at the time that Mr. L--- owned the property. Mr. L--- transferred this property to you and your wife in violation of Civil Code sections 3439.04 and 3439.05. The lien that the Board recorded was intended to put successors of Mr. L---’ interest in the property on notice of the Board’s statutory lien and that those successors will take title to the property subject to that lien. Government Code section 27282 provides that a notice of state tax lien executed by a state agency and filed

with a “recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.”

As you have been advised, the Notice recorded by the Board refers to you and your wife as “nominees” of the property. There is no implication in the Notice that you and your wife are delinquent in the payment of any taxes.

We decline to record a release of this Notice as it would permit subsequent purchasers of this property to claim the status of “bona fide purchasers” without knowledge of the Board’s lien.

Very truly yours,

Thomas J. Cooke
Tax Counsel

TJC/cmm

cc: Santa Ana District Administrator (EA)
Mr. Rick A. Slater (MIC:55)