

Memorandum

170.0240

To : Mr. Dennis Sturdevant
Compliance Planning and Evaluation

Date: May 6, 1997

From : Thomas J. Cooke
Tax Counsel

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

Subject: S--- I---, Ltd.

This office has received your memorandum dated May 2, 1997 concerning the above taxpayer.

In your memorandum, you state that a successor trustee of the above Massachusetts or business trust is claiming that a determination cannot be issued against him for the liability due by the trust apparently on the basis that the trust agreement provides that the trustee shall not be personally liable "when dealing with Trust property or matters, and such persons [claimants of the Trust] must look only to the assets of the Trust Estate for payment"

In *People v. Sisco* (1939) 31 Cal.App.2d 345, a trust agreement of a Massachusetts or business trust provided that the trustees should not be personally liable for the obligations of the trust. The appellate court stated:

"We hold that such a liquidated demand or obligation as the amount of sales tax duly levied by the state board of equalization upon a retailer which is a business trust is a claim on which the trustees of said business trust are personally liable, under the general rule that trustees of such trusts are personally liable for the obligations of their trusts except when specifically exempted, either expressly or by implication."

The court cited the case of *Goldwater v. Olman* (1930) 210 Cal. 408 and stated:

"That case holds that the trustees of a Massachusetts Trust are personally liable on all contracts with third persons in the absence of an express or implied agreement with the creditor to the contrary, and that mere knowledge of a provision in the trust agreement that persons having dealings with the trustees shall look only to the property of the trust for payment will not release the trustees from personal liability in a case where they have not stipulated against it."

Since the trustee of S--- I---, Ltd. cannot show that the Board agreed expressly or by implication to exempt him from the tax due by the trust, a determination can be issued against the trustee.

TJC/cmm

cc: Riverside District Administrator (EH)